Baker McKenzie.

GLOBAL PUBLIC M&A GUIDE

5th Edition

TRANSACTIONAL
POWERHOUSE

Leading and closing complex deals – every day

Global Public M&A Guide

5th Edition

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All summaries of the laws, regulation and practice of public M&A are subject to change and, unless otherwise noted, are current only as of 1 January 2025.

Editor's Note

We are pleased to present the 5th edition of Baker McKenzie's Global Public M&A Guide. Drawing on our unparalleled experience in all aspects of both domestic and cross-border transactional work, this guide is intended to provide an overview of some of the key legal considerations associated with public M&A transactions across the globe.

This guide is a product of numerous contributions from various practitioners around the world, to all of whom we would like to extend our profound thanks for their time, care and expertise.

Lisa Nielsen Board, Editor in Chief

Foreword

Public M&A transactions can ordinarily be complex and labyrinthine - becoming even more intricate as they begin to span multiple jurisdictions and legal regimes. At Baker McKenzie we are a transactional powerhouse with extensive experience of leading public deals across multiple borders and legal frameworks. We have the market knowledge, legal expertise and creativity needed to successfully execute complex and high profile transactions.

While there are many factors to consider, we would like to share what we believe are a few of the key areas of focus for any companies contemplating a public M&A deal. These issues usually appear in all transactions and can be considered across any jurisdiction, industry or deal.

- **Don't take unnecessary chances**. Public M&A deals, particularly those with a cross-border element, are risky propositions. Maximize your chances for a timely and successful closing by adopting best practices in deal structuring and techniques.
- **Understand local requirements**. The local laws and regulations that apply to your counterparty in the deal must be taken into account. Our updated guide now also includes details of restrictions on foreign investments.
- **Assemble a trusted team**. You will likely need a full team of experienced experts in whom you have confidence, including lawyers, accountants and bankers. On the legal side, ensure you not only know the corporate team but also the lead partners responsible for tax, employment, antitrust/competition, compliance/sanctions and any other areas that are especially important to your company.
- Remember the end goal. The deal is typically not an end in itself but rather a means to achieve important business objectives. Thus, the deal does not really end at closing; instead, its true value comes from a smooth and efficient business integration. Working with your team of advisers, plan for this integration from Day One.

Rather than a comprehensive piece, the focus of this guide is primarily on the practice of conducting a takeover of a publicly listed company with summaries of the general legal framework, takeover practices and tactics across jurisdictions and general considerations associated with a public M&A transaction. Of course, all transactions will come with their own unique factors and requirements; but we believe our readers should find this a valuable resource for general education and reference.

Jannan Crozier, Chair, Global M&A Practice Group
Adam Farlow, Chair, Global Capital Markets Practice Group

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Argentina

1. Overview

Argentina is currently facing a debt restructuring process and an economic crisis. If the government successfully conducts the debt restructuring process, the Argentine market for public companies is expected to grow in size. The local market is under the control and supervision of the National Securities Commission (*Comisión Nacional de Valores*, the "**CNV**").

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Argentine law relating to public M&A can be found in:

- The Civil and Commercial Code
- Commercial Companies Law No. 19,550
- Capital Markets Law No. 26,831 ("**Capital Markets Law**") as amended by Law No. 27,440

The regulatory authority for public M&A is the CNV. The CNV issued General Resolution No. 622/2013/CNV ("**Securities Resolution**"), as amended.

The Securities Resolution, together with the Capital Markets Law, contain the main rules on public takeover bids in Argentina.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Argentina, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to transparency and market manipulation under the Criminal Code.

(b) The general rules on the supervision and control of the financial markets.

(c) The rules and guidelines issued from time to time by the CNV.

(d) The rules and regulations regarding merger control, including but not limited to the Antitrust Law No. 27,442 and the specific resolutions issued by the Argentine Antitrust Authority. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement by the CNV

Public takeover bids are subject to the authorization, supervision and control of the CNV, which has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including but not limited to administrative fines and prohibiting the launch of a public offering takeover bid. Criminal penalties could also be imposed by the courts in the case of non-compliance.

2.4 General principles

The following general principles apply to public takeovers in Argentina. These rules are based on the Capital Markets Law and the Securities Resolution:

(a) all holders of the securities of a target company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that he/she can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2.5 Governmental prior approval - Foreign investments regulation

Foreign investments are not restricted in Argentina and are only subject to reporting upon completion. However, in certain specific sensitive activities prior authorization may be required by the relevant regulatory authority (applicable both to local and foreign investors).

The following could be considered sensitive activities:

(a) **Financial entities**: The acquisition of any participation in a local financial entity that is capable of producing a change in the rating of the financial entity or that modifies the entity's shareholders group structure shall require prior authorization by the Argentine Central Bank.

(b) **Telecommunication entities**: The acquisition of a participation in a local telecommunication company will be subject to the prior authorization of the local telecommunications authority (ENACOM).

(c) **License and/or concession agreements regarding public services**: Such agreements usually include a change of control provision. As a result, the acquisition of a participation in a public company that has a concession for the provision of a public services, e.g., the provision of electricity, water, gas, transportation, public health and hydrocarbons or other sources of energy, will probably need to be previously approved by the relevant authority.

(d) **Acquisition of real property**: Acquisition of real property in border areas or security zones will be subject to the Rural Land Law (No. 26,737) and Decrees.

3. Before a Public Takeover Bid

3.1 Restrictions and careful planning

Argentine law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company and prior due diligence by a candidate bidder.

3.2 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. The rules include, amongst other things, that manipulation of the target's stock price is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

3.3 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all relevant information. The facts surrounding the preparation of a public takeover bid may constitute inside information. The board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. This could, for instance, be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

3.4 Announcements of a public takeover bid

A bidder that intends to announce a public takeover bid must first inform the CNV of its intention and obtain the CNV's authorization to make the announcement and launch the public takeover bid. In addition, the bidder will at that time have to make the necessary filings for the actual launching of a public takeover bid since, as soon as the public takeover bid is announced, it can normally no longer be withdrawn (except in certain circumstances).

3.5 Due diligence

The CNV public takeover bid rules do not contain specific rules regarding the question of whether or not a prior due diligence can be organized, nor how such due diligence is to be organized.

4. Effecting a Takeover

There are three main forms of takeover bids in Argentina:

- a voluntary takeover bid, in which a bidder voluntarily makes an offer for voting securities issued by the target company (and securities issued by the company conferring the right to acquire voting securities of the target company);
- a mandatory takeover bid, which a bidder is required to make if the intention is to acquire a control participation in the public company; and
- a squeeze-out bid, in which a shareholder who already holds 95% of the voting securities can squeeze out the remaining holders of voting securities. This can be combined with a voluntary or mandatory takeover bid.

A bidder that intends to launch a takeover bid must include certain specific information in its notification to the CNV, including but not limited to the draft prospectus and proof of the funds needed to pay the purchase price. As regards the mandatory takeover bid, the Capital Markets Law provides that the takeover bid shall be mandatory only in those cases in which 50% or more of voting rights of a listed company are acquired, or a participation of less than 50% is reached but the purchaser acts a controller, for example, in a concerted action in the case of shareholder agreements that allow for the appointment of directors or to resolve key matters relating to the operation of the company.

4.1 Voluntary public takeover bid

- The bidder is free to make the takeover bid subject to merger control clearance, prior approval by the CNV and certain other conditions precedent, such as a minimum acceptance level.
- The bidder is, in principle, free to determine the price and form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):
  - The offered price may be paid in cash, securities or a combination of both.
  - There is no minimum price for a voluntary takeover bid, but the legal rules provide that the terms of the takeover bid, including the price, must be such that they could be reasonably expected to allow the takeover bid to succeed. In addition, the Securities Resolution provides for certain requirements to be complied with in connection with the price, e.g., the need to obtain two independent opinions on the price included.
  - If there are different categories of securities, different prices per category can only be due to the characteristics of such categories.
  - There can be no price difference within the same category of securities.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account), as a result of an acquisition of voting securities, intend to directly or indirectly hold 50% or more of voting stocks of a listed company, or hold a participation of less than 50% but the purchaser acts as a controller.
- The main exceptions to the takeover bid obligation include, among others, the following:
  - the controlling participation has been reached after a voluntary bid made to all holders of securities
  - acquisitions made by financial trusts
  - acquisitions made under an expropriation law
  - acquisitions in which all the shareholders of the public company have unanimously agreed to sell the shares
  - acquisitions made as a consequence of a reorganization of economic sectors required by the government

- The offered price shall be the highest price of the following:
    - The highest price that the offeror or individuals acting on behalf of or jointly with the offeror would have paid or agreed for the securities subject to the offer within 12 months prior to the start date of the takeover bid (non-significant volume acquisitions in relative terms will not be considered, provided they have been made at the quoted price, in which case the higher price paid for the remaining acquisitions in the period referenced shall be considered).
    - The average price of the securities subject to the offer during the semester immediately prior to the date of the announcement of the operation by which the change in the controlling participation is agreed.
- The consideration offered shall consist of cash.
- The CNV has the power to allow or require an amendment of the price, including if it appears that, apart from the consideration offered, special direct or indirect advantages are granted to certain transferors of the securities.

4.3 Follow-on squeeze-out and sell-out right

- Follow-on squeeze-out - a bidder will be able to squeeze out the residual minority shareholders at the end of the takeover bid if it holds, alone or in concert with others, 95% of the voting securities of the target.
- Sell-out right if the bidder is not itself launching a squeeze- out - minority shareholders also have a sell-out right if, at the end of the takeover bid (or of its reopening), the bidder holds, alone or in concert with others, 95% of the voting securities of the target.

5. Timeline

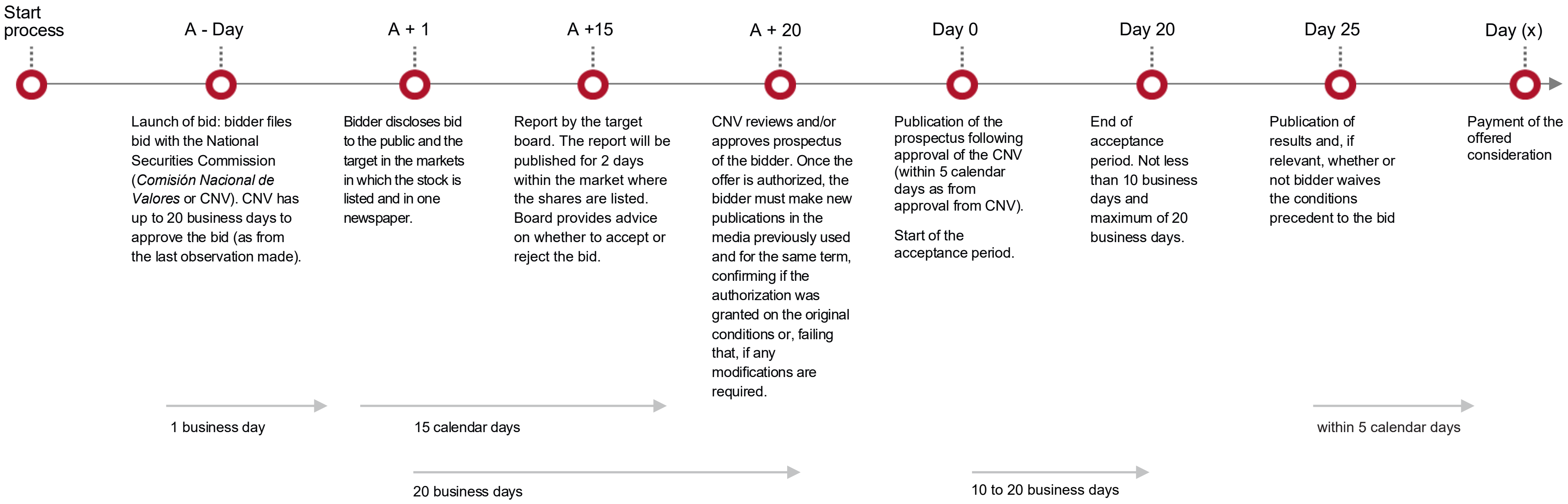
As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions. The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under Argentine law.

Step
1. Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft prospectus). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2. Launching of the bid: • The bidder files the bid with the CNV. The filing must contain, amongst other elements, proof of certain funds to pay the offer price and a draft prospectus. • On the next business day at the latest, the CNV discloses the bid to the public and the target company. As of that moment, the bid is public, the bidder can no longer withdraw the bid (except in certain limited circumstances such as in the event of a counter- bid or certain defensive actions by the target company) and the powers of

Step	
	the board of the target company are limited. Modifications are only allowed to improve the offer. • The CNV will also notify the target and provide the target's board with a draft of the prospectus that was filed with the CNV. • Counter-bids and higher bids can be filed (until the expiration of the acceptance period of the last bid).
3.	The board of the target has a maximum term of 15 calendar days, counted from receipt of the bid, in order to prepare a detail report on the bid, including its advice either to accept or reject the bid. In addition, it shall include any express agreement between bidder and the target. Such report shall be published for two days in the market where the shares are listed.
4.	Review and approval of the prospectus of the bidder by the CNV shall take place within approximately a term of 15 business days, counted from receipt of the bid. Nevertheless, if the CNV requires further clarifications, then such term is suspended until the clarifications are provided by the bidder.
5.	Publication of the prospectus after the approval of the CNV.
6.	The duration of the acceptance period shall be not less than 10 business days and not more than 20 business days. Nevertheless, an additional term of five business days can be granted to those shareholders that have not accepted the offer within the general term.
7.	Publication of results (once the term provided under 6 above has expired).
8.	Publication of results and, when relevant, whether or not the bidder waives the conditions precedent to the bid (within five business days of the end acceptance period).
9.	Payment of the offered consideration by the bidder.

Set out below is an overview of the main steps for a friendly public offer in Argentina.

Indicative timeline for a friendly public offer



Start process	
A - Day	Launch of bid: bidder files bid with the National Securities Commission (*Comisión Nacional de Valores* or CNV). CNV has up to 20 business days to approve the bid (as from the last observation made).
A + 1	Bidder discloses bid to the public and the target in the markets in which the stock is listed and in one newspaper.
A +15	Report by the target board. The report will be published for 2 days within the market where the shares are listed. Board provides advice on whether to accept or reject the bid.
A + 20	CNV reviews and/or approves prospectus of the bidder. Once the offer is authorized, the bidder must make new publications in the media previously used and for the same term, confirming if the authorization was granted on the original conditions or, failing that, if any modifications are required.
Day 0	Publication of the prospectus following approval of the CNV (within 5 calendar days as from approval from CNV). Start of the acceptance period.
Day 20	End of acceptance period. Not less than 10 business days and maximum of 20 business days.
Day 25	Publication of results and, if relevant, whether or not bidder waives the conditions precedent to the bid
Day (x)	Payment of the offered consideration

1 business day

15 calendar days

within 5 calendar days

20 business days

10 to 20 business days

6. Takeover Tactics

As the local market for public M&A is relatively small, there has been no major development in this regard, and the main takeover defense is usually the mandatory tender offer required by the CNV. However, certain defensive measures used in Argentina have included the following:

Mechanism	Assessment and considerations
1. Sale of crown jewels	• An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a takeover bid. • Requires prior approval by the general shareholders' meeting (no quorum and simple majority of the votes cast).
2. Frustrating actions	• Actions such as significant acquisitions, disposals, changes in indebtedness, etc. • Only transactions that have sufficiently progressed already (prior to receipt of notification of a takeover bid) may be implemented by the target's board. • Other transactions require the shareholders' approval after the takeover bid has been notified to the target. • As from the publication of the bid, the boards of directors shall be neutral. For example, they cannot, among other things, proceed with the sale, lien or lease of real estate or other assets, do anything to frustrate or disrupt the offer or declare extraordinary dividends.
3. Shareholders' agreements	• Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.
4. Limitation of voting rights	• A clause in the articles of association providing for a proportional restriction of voting rights (applying to all shareholders equally).
5. Veto rights for certain shareholders	• Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms. • Requires an express inclusion in the articles of association.
6. Limitations on share transfers	• Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders. • Exceptional for listed companies (listed securities are, in principle, freely transferable; impact on share liquidity).

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom he/she acts in concert) holds 95% of the share capital with voting rights and 95% of the voting securities, the same can force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to the bidder.

7.2 Sell-out

If a bidder were to be permitted to carry out a summarized squeeze- out bid, the security holders that did not accept the takeover bid shall nevertheless have the right to demand that the bidder acquires their voting securities and securities conferring the right to voting securities at the terms of the takeover bid.

8. Delisting

As a rule, the CNV may oppose the delisting of an Argentine company in the interest of protecting investors. The CNV will traditionally not permit a delisting unless a squeeze-out has been carried out.

9. Contacts within Baker McKenzie

Gustavo Boruchowicz, Gabriel Gómez Giglio, Roberto Grané and Francisco José Fernández Rostello in the Buenos Aires office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Argentina.

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Australia

1. Overview

The Australian takeover market is well established and highly developed, with the regulatory framework having been in place for several decades and a substantial body of market practice having formed.

2. General Legal Framework

2.1 Main legal framework

Public company control transactions, whether by takeover bid or scheme of arrangement, are highly regulated in Australia.

The main source of regulation of takeover offers is Chapter 6 of the Corporations Act, 2001 (Cth) ("**Corporations Act**") as modified and interpreted by the exercise of broad discretionary powers vested in the Australian Securities & Investments Commission (ASIC) (the Australian corporate regulator) and the Takeovers Panel (a specialist tribunal that resolves takeover disputes).

A public company takeover can also be implemented by way of a "scheme of arrangement", which is a court-approved form of transaction between a company and its shareholders. The main source of regulation for schemes of arrangement is Chapter 5 of the Corporations Act, together with ASIC policy on disclosure principles and other matters and oversight by the court (state Supreme Court or the Federal Court).

The most common takeover structures in Australia are off-market takeover bids, on-market takeover bids and court-approved schemes of arrangement. These takeover structures are discussed in further detail in Section 4.

This guide focuses on the acquisition of shares in a listed public company. The same rules and principles will generally apply to interests in a listed managed investment scheme (such as units in a unit trust). However, only companies can use schemes of arrangement, and managed investment schemes have to use a special kind of "trust scheme".

2.2 Other rules and principles

Other rules and principles that may be relevant to a takeover offer in Australia include:

- competition rules set out in the Competition and Consumer Act 2010 (Cth) which are administered by the Australian Competition and Consumer Commission (ACCC);
- foreign investment rules set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and the accompanying regulations, where proposed acquisitions requiring approval are regulated by the Treasurer of the Commonwealth of Australia with assistance from the Foreign Investment Review Board (FIRB); and
- other rules specific to an industry (such as banking, broadcasting, aviation and gaming) which may regulate control transactions.

The listing rules of the Australian Securities Exchange ("**ASX**") do not separately regulate takeovers in any major way. This means that non- Australian companies that are listed on the ASX will generally be regulated only by the law of their home jurisdiction, and will not be subject to Australian takeover regulation.

2.3 Supervision and enforcement by the regulatory bodies

Takeovers in Australia are principally regulated by ASIC, with takeover disputes largely being determined by the Takeovers Panel. The courts play a central role in takeover offers conducted by way of scheme of arrangement, but otherwise have a limited role in takeovers.

ASIC is a government body which supervises the operation of companies and securities law including takeovers. It is responsible for monitoring compliance with the Corporations Act and has wide powers to investigate the conduct and share trading activities of parties involved in a takeover, among other things. ASIC also has broad facilitative, regulatory and enforcement powers, and has the power to modify and grant relief from the takeover rules.

The Takeovers Panel is a non-judicial body and is the principal forum for resolving takeover disputes. It has the power to declare circumstances unacceptable and to make remedial orders on a principles-based determination, without requiring there to be a breach of law.

2.4 Fundamental principles

The following principles set out the objectives of the takeover provisions in the Corporations Act:

- that the acquisition of control of a public company takes place in an efficient, competitive and informed market;
    - that the shareholders and directors of a public company:
    - know the identity of any person who proposes to acquire a substantial interest in the public company;
    - have a reasonable time to consider the proposal; and
    - are given enough information to assess the merits of the proposal;
- that, as far as practicable, the public company's shareholders should all have a reasonable and equal opportunity to participate in any benefits accruing to the entity's shareholders through the proposal; and
- that an appropriate procedure is followed as a preliminary to compulsory squeeze-out of the minority shareholders under the Corporations Act.

2.5 Foreign investment regulations

Foreign investments in Australian entities, businesses and land are regulated by the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA) and related legislation and Australia's Foreign Investment Policy (Policy). The FIRB administers the legislation and Policy and assists the Treasurer of the Commonwealth of Australia ("**Treasurer**") to make decisions on foreign investment proposals submitted for approval.

A "foreign person" that proposes to invest in an entity, business or land in Australia must apply for approval (typically referred to as "**FIRB approval**") if the transaction involves a "notifiable action". If the transaction involves a "significant action" (but not a notifiable action) it is not mandatory to seek approval but the Treasurer may prohibit or reverse the transaction if it is contrary to Australia's national interest. There is no specific definition of "national interest" in the legislation, although the Policy provides some guidance. Whether an investment by a foreign person involves a notifiable action and/or a significant action depends on the nature of the investment and, in most cases, the extent of the interest acquired and the value of the investment or the relevant entity or business.

In general, proposals to acquire an interest of 20% or more in any Australian business valued at over A$330 million (or the higher threshold of A$1,427 million for agreement country investors from Chile, China, Japan, Korea, Singapore, New Zealand and the United States) require prior approval.

All foreign government investors also require approval to acquire a direct interest in an Australian entity or an Australian business or to start a new Australian business, regardless of the value of the investment.

Restrictions also apply to the investment by foreign investors in real estate (including commercial and residential land), agribusiness and agricultural land. In addition, investments in certain sectors are subject to more stringent requirements, including investments in the telecommunications, media, transport and defense sectors. For example, an investment of 5% or more in an entity or business in the media sector will require FIRB approval, regardless of value.

All applications to FIRB must be made online and incur a fee which varies depending on the size of the proposed transaction.

We recommend that any foreign person seeking to make an investment in an Australian asset or entity carefully considers the application of FATA prior to entering into any transaction.

2.6 Proposed reforms

There are currently no significant proposed reforms to the takeover rules in Australia.

ASIC issues and regularly updates regulatory guides to provide informal direction as to how it normally interprets and applies relevant provisions of the Corporations Act. In addition, the Takeovers Panel issues guidance notes on various takeover issues that may give rise to unacceptable circumstances and publishes its reasons for decisions on its website.

3. Before a Public Takeover Bid

3.1 Basic takeover prohibition

The Corporations Act prohibits a person from acquiring a 'relevant interest' in issued voting shares of a company if, because of the transaction, either that person's or someone else's 'voting power' in the company increases:

- from 20% or below to more than 20%; or
- from a starting point that is above 20% and to a level below 90%,

unless the acquisition occurs under one of the permitted exceptions permitted by the Corporations Act (as discussed in 3.2 below).

The Corporations Act regulates acquisitions of more than 20% of:

- the voting shares in a listed Australian company, or in an unlisted Australian company with more than 50 shareholders; and
- the voting interests in a listed managed investment scheme (the most common example of which is a listed unit trust, such as a REIT).

The key concept in determining whether or not an acquisition breaches the 20% limit is the "voting power" which results from the acquisition.

(a) "Voting power"

A person's "voting power" in a company is the aggregate of that person's "relevant interests" in voting shares and the "relevant interests" of that person's "associates", expressed as a percentage of all issued voting shares.

(b) "Relevant interest"

The concept of "relevant interest" is broad, covering almost all situations where a person has direct or indirect control over the voting or disposal of a share.

(c) "Association"

An associate of a person is defined to capture a broad range of circumstances. In essence, two persons will be associated if:

- they are both corporate bodies and one controls the other or they are under the common control of another person;
- there is an agreement, understanding or arrangement (whether legally enforceable or not) between them for the purpose of controlling or influencing the relevant company's board or affairs; or
- they are acting or proposing to "act in concert" in relation to the relevant company's affairs.

3.2 Exceptions to the basic takeover prohibition

Where a bidder aims to take control of the target company (generally 100%, but can be as low as 50%), the main structures for achieving this result are:

Exception	Nature of transaction
Off-market takeover bid	An acquisition resulting from the acceptance of an offer under a takeover bid by way of off-market acceptance.
On-market takeover bid	An acquisition resulting from the acceptance of an offer under a takeover bid by way of on-market acceptance.
Scheme of arrangement	An acquisition approved by the target shareholders and the court.
Shareholder approval	An acquisition made with the approval of a vote of target company shareholders in general meeting.
Creep acquisition	Acquisitions of no more than 3% of the voting power in a rolling six-month period from a starting point above 19%.
Downstream acquisition	An acquisition resulting from the acquisition of shares in an "upstream" entity, i.e., one which is listed on the ASX or on a specified foreign exchange, which itself has a relevant interest in a "downstream" ASX-listed company or trust.
Rights issue	An acquisition resulting from pro-rata rights issues to all shareholders.

Unlike the takeover laws of some other jurisdictions, there is no "follow-on" or "mandatory bid" rule in Australia which would allow a bidder to acquire shares above the 20% limit if it then immediately makes a general offer to all other shareholders in the target company. Instead, a bidder must stop at the 20% limit, and then make its bid from that point.

3.3 Shareholding thresholds

The table below provides an overview of the key shareholding thresholds for a public company under the Corporations Act:

Percentage (%) of issued shares	Implications
≥5%	Substantial holder notice: • Persons who, together with their associates, have relevant interests in voting shares representing 5% or more of the votes in a publicly listed company or listed registered managed investment scheme must disclose details of their relevant interest by filing a substantial holder notice. Disclosure must also be made when a person's substantial holding changes by 1%, if they cease to have a substantial holding or if they make a takeover bid.
>10%	Blocking of compulsory acquisition following takeover bid: • A person who has a greater than 10% shareholding interest in a publicly listed company or listed registered managed investment scheme will be able to prevent a majority shareholder from moving to 100% ownership through compulsory acquisition (the compulsory acquisition threshold is 90%).
>20%	Takeovers threshold: • A person cannot acquire a "relevant interest" in a public company's shares if it would result in that person's or someone else's "voting power" in the company increasing from 20% or below to more than 20%, or increasing from a starting point that is above 20% to a level below 90%, unless the acquisition occurs via a specified exception.
≥25%	Blocking of scheme of arrangement: • A person holding 25% or more of a public company's shares can block the approval of a takeover conducted by a scheme of arrangement, as one of the scheme voting thresholds is approval by at least 75% of the votes cast on the scheme resolution. Blocking of special resolutions: • A person holding 25% or more of a company's shares can unilaterally block the approval of a special resolution.

Percentage (%) of issued shares	Implications
>50%	Passage of ordinary resolutions: • A person holding more than 50% of a company's shares can pass an ordinary resolution. Importantly, directors can be appointed and removed by shareholders by ordinary resolution.
≥75%	Passage of special resolutions: • A person holding 75% or more of a company's shares can pass a special resolution.
≥90%	Entitlement to compulsory acquisition: • Generally, where a person owns 90% or more of a company's shares, they can compulsorily acquire the remainder.

3.4 Restrictions and careful planning

In Australia, there is established market practice and certain rules that impose restrictions prior to the announcement of a takeover, including in relation to prior stake building by a bidder and prior due diligence by a potential bidder. Accordingly, some careful planning is necessary if a potential bidder or target company intends to commence a process that may lead to a takeover.

3.5 Due diligence

In a friendly or solicited bid, the bidder may be given pre-bid access to confidential information of the target company. Given that publicly listed entities in Australia are subject to extensive reporting requirements and have strict continuous disclosure obligations in respect of price sensitive information, the due diligence should generally tease out additional detail around what has already been publicly disclosed.

Once a bidder comes into possession of non-public price-sensitive information, its ability to buy any shares before launching the bid may be hindered by insider trading restrictions.

In a hostile bid, there will most likely be no opportunity to undertake detailed due diligence on the target, and the bidder has to take the risk that the target company's public announcements may be incomplete or may not be sufficiently detailed.

3.6 Confidentiality and standstill agreement

A potential bidder will usually be required to enter into some form of confidentiality or non-disclosure agreement restricting its use and disclosure of the confidential information it receives.

As a trade-off for granting due diligence access, a target company may require the potential bidder to agree to a standstill restriction. Standstills will generally last for up to 12 months and will prohibit the potential bidder from buying shares or launching a bid other than on terms which the target company's directors have approved. Care needs to be taken before agreeing to a standstill, as these agreements will be enforced by the Takeovers Panel. A bidder should therefore ensure that a standstill lasts for no longer than is necessary, and that it releases the Bidder in appropriate circumstances.

Standstill agreements serve a number of purposes for a target company. They achieve a strategic goal for a target company by giving it some measure of control over the terms on which a takeover will occur. Furthermore, they provide some protection for the target company from potential liability for "tipping" under the insider trading provisions of the Corporations Act. "Tipping" is where a person discloses non-public, price- sensitive information to a person who the first person believes would be likely to acquire target company shares.

3.7 Pre-bid acquisitions

A potential bidder may seek to acquire a relevant interest in the target company's shares in advance of acquiring shares under a control transaction.

There are several benefits to a bidder in acquiring a pre-bid stake, including:

- it forces the target company to take the bid seriously and engage with the bidder;
- a bidder can deter potential rival bidders with a "blocking stake";
- the bidder has a first-mover advantage if the bid turns competitive;
- an existing holding counts towards the 90% compulsory acquisition threshold in a takeover bid; and
- it can reduce the overall average acquisition cost if acquired at below the bid price.

There are risks involved in acquiring a pre-bid stake. The following table outlines the key considerations in respect of a pre-bid acquisition.

Consideration	Implications
Substantial holder notice	If the prospective acquirer acquires 5% or more of the target shares, it must disclose details of its holding via the filing of a substantial holding notice.
20% takeovers rule	The prospective acquirer must ensure that it does not have a relevant interest in more than 20% of the target shares, or otherwise voting power of more than 20% in the target, as a result of any pre-bid acquisitions.
Foreign investment approval requirements	If the prospective acquirer is a non-Australian entity, in many circumstances the acquisition must also be approved by the Treasurer acting on the advice of FIRB.
Insider trading	A bidder seeking to acquire a pre-bid stake must comply with Australian insider trading laws, which prohibit dealing in shares by persons who are in possession of material price-sensitive information that is not publicly available.
Pricing issues	The price paid for any shares acquired in the four-month period prior to a bid being made will operate as a minimum price for the bid.

Consideration	Implications
Collateral benefits	The acquisition must not be on terms which offer a benefit selectively to some but not all shareholders as an inducement to accept a takeover offer.
Association	The prospective acquirer must be mindful of any "agreement, arrangement or understanding" (written or otherwise) arising between it and any shareholder for the purposes of controlling or influencing a target's board or affairs or in relation to target shares.

3.8 FIRB applications

A fee is payable in relation to any application to FIRB for approval of a proposed transaction, at the time the application is submitted. The amount of any fee payable depends on the size of the proposed transaction. The FIRB application process comprises an online application process. The FIRB application process is conducted on a confidential basis.

4. Effecting a Takeover

4.1 Structure of acquisitions in Australia

A key strategic decision to make, for both the bidder and the target company in a control transaction, is which acquisition structure to use. It is possible to acquire the entire issued share capital of an Australian public company by two principal means: a takeover bid (the off-market version of which is like a "tender offer" in other jurisdictions) or a scheme of arrangement (which is like a "merger" in other jurisdictions).

4.2 Takeover bids

A takeover bid is essentially a regulated offer to buy target company shares which is made on identical terms to each target company shareholder.

There are two types of takeover bids in Australia: off-market bids and on-market bids. The key differences between these two methods are as follows:

Consideration	Off-market bids	On-market bids
Bid procedure	The offer is made by sending personalized, formal, written offers to every target company shareholder on identical terms. Shareholders accept by responding to the bidder	The bidder stands in the stock market (using a stockbroker) offering to buy all target shares at the offer price. Shareholders accept by selling on-market in the normal way, and settle sales on a standard T+2 basis.
Types of target	Listed or unlisted companies. Quoted or unquoted securities.	Listed companies and quoted securities only.
Offer price	Cash, securities (shares, debentures, options, etc.) or any combination.	Cash only (like any on-market trade).

Consideration	Off-market bids	On-market bids
Conditions	Can be conditional on a wide range of events, subject to some limitations. Common conditions include acceptances reaching a control or compulsory acquisition level, obtaining regulatory approvals and no "material adverse change".	Must be unconditional. If a bidder requires foreign investment or competition regulatory approvals, an on-market bid may not be feasible.
Partial bids	Offer can be a full bid for 100% of each holder's shares, or a partial offer for up to a fixed proportion (such as 50%) of each holder's shares.	Not possible – the offer must be for 100% of target shares.

An off-market takeover bid is more commonly used than an on-market bid as it allows for flexibility in the offer structure, particularly due to the conditions that a bidder may impose.

(a) Rules applicable to all takeover bids

Both types of takeover bid share a number of common characteristics, including the following:

- Announcing a bid – Once a bidder publicly announces a proposal to make a takeover bid, it must make takeover offers within two months on terms no less favorable than the announced terms.
- Offer period – The takeover offer must be open for at least one month. Either kind of bid can be extended one or more times by the bidder up to a maximum offer period of 12 months. An extension of a conditional off-market offer by more than one month (in total) will give shareholders who had already accepted the offer a right to withdraw their acceptance. In some circumstances, the offer will be automatically extended by up to 14 days by operation of the Corporations Act.
- Offer price – The same price must be offered to all shareholders, and the bidder may increase the price during the bid. Under an off-market bid, the increased price must be paid to all shareholders who accept the offer, even those who accepted before the bid price was increased. However, under an on-market bid, the increased price is paid only to those shareholders who accept the offer after the price has been increased.
- Disclosure documents – The offers, when made, must be accompanied by a disclosure document called a Bidder's Statement. The target company responds with its own disclosure document called a Target's Statement.
- Selective benefits – There is a restriction on providing benefits during the offer period to some target company shareholders without extending the benefits to all shareholders.
- Sale of shares by bidder – The bidder is not permitted to dispose of any target company shares during the bid period, unless another non-associated bidder makes or increases a competing takeover bid for the target company.

- Compulsory acquisition – Following a bid, the bidder will generally be able to compulsorily acquire the shares held by the remaining minority shareholders at the bid price if it achieves at least a 90% holding in the target.

(b) The bid price

The bid price must equal or exceed the highest price paid (or agreed to be paid) by the bidder or any of its associates during the four months before the date of the bid. If two or more alternatives are offered (for example, cash or scrip), then the value of each alternative must comply with the minimum price rule.

In the event that the bidder acquires shares in the target company on the market (as permitted by the Corporations Act) during the offer period and the consideration for shares purchased on the market is higher than under the takeover offer, the offer to all other target shareholders is increased and the additional amount is payable to those who have already accepted the offer.

(c) Conditions precedent in a takeover offer

Off-market takeover bids may be subject to conditions precedent. On-market bids, however, must be unconditional. Off-market bids are usually subject to a number of conditions, including a minimum acceptance condition (generally either 50.1% for control or 90% for compulsory acquisition), a condition that the target does not announce any material adverse change in its financial position during the bid period, and a condition that all necessary regulatory approvals are obtained. Bids can also be conditional on external events, such as a fall in a specified market index.

However, the Corporations Act provides that conditions of the following kind cannot be included:

- a maximum acceptance condition (for example, a condition that the bidder is not obliged to proceed if acceptances are received for more than a specified percentage of shares);
- a condition that allows the bidder to acquire shares from some, but not all, of the shareholders who accept the bid;
- a condition that target company shareholders approve or consent to a retirement payment being made by the target to any officer of the target company; and
- a condition which is dependent upon the opinion, belief or other state of mind of, or an event that is within the sole control of, the bidder or any of its associates. For example, a condition that the bidder is "satisfied" with the results of its due diligence on the target company could not be included.

(d) Bidder's disclosure obligations

The Corporations Act requires that a Bidder's Statement must be sent by the bidder to all target company shareholders with its offer. The document must include a range of specific information, as well as general disclosure of all information (including confidential information) known to the bidder that would be material to a decision regarding the acceptance of the offer.

The key specific disclosure requirements are:

- the identity of the bidder, including its controllers and associates;

- the bidder's intentions regarding the continuation of the business of the target company, the future employment of the present employees of the target company, and details of the changes that may be made to the business of the target (such as any proposed restructuring or sale of non- core divisions); and
- if the bid price includes cash, details of the bidder's source of cash funding.

(e) Target's disclosure obligations

The directors of the target company must issue a Target's Statement in response to the Bidder's Statement, which similarly has both specific and general disclosure obligations. The specific disclosure obligations include a recommendation from each target company director as to whether or not the bid should be accepted, together with reasons for that recommendation. The general disclosure obligation requires disclosure of all information known to directors of the target company which target shareholders and their professional advisers would reasonably require to make an informed decision in relation to the takeover bid. As with the Bidder's Statement, this includes material information which is otherwise confidential.

The directors' recommendations are important disclosures because it is common for some target shareholders to pay particular regard to the views of the board. The prospect of securing a favorable recommendation from target company directors (that is, a "friendly" bid) will often be attractive to a bidder. Accordingly, it is essential that the disclosure surrounding the directors' recommendations is fully explained and reasoned.

A Target's Statement must include an independent expert's report opining on whether the takeover bid is "fair and reasonable" in circumstances where the bidder's voting power in the target company is 30% or more, if the bidder is a director of the target company or if the bidder has a director in common with the target company. Even where an independent expert's report is not required by law, it is common for target companies to include such a report in the Target's Statement.

(f) Updating disclosure documents

There is a general obligation on the bidder and target to update their respective Bidder's Statement or Target's Statement if, during the bid period, they become aware of a new matter that is material to target shareholders.

The update is made by preparing a supplementary statement, which is lodged with ASIC and sent to the ASX for public release.

4.3 Schemes of arrangement

An alternative acquisition structure to a takeover bid is a "scheme of arrangement" (sometimes called a merger). A scheme is a court-approved form of corporate reconstruction. The scheme structure involves a shareholder vote rather than offers being made to, and accepted by, each shareholder individually (as is the case in a takeover bid) and, depending on the outcome of the vote, it delivers an "all or nothing" result. If it is approved by shareholders and by the court, the scheme of arrangement binds all of the target company's shareholders, including those who voted against it (or did not vote at all). Conversely, if a scheme is not approved, then it does not become effective, even for those shareholders who voted in favor of the scheme.

The mechanics of a scheme usually involve a transfer of all existing target shares to the bidder in exchange for the offer price which, like a takeover, can involve cash, securities, or any combination of the two. Schemes can also provide for the cancellation of all target shares other than those held by the bidder. In either case, the target company becomes a wholly owned subsidiary of the bidder. The target company does not "merge into" the bidder and cease to exist, unlike the merger procedure in certain other jurisdictions.

As it is the target company which has to prepare the scheme documents, apply to the court and convene the shareholders' meeting, a scheme cannot be used for a hostile takeover.

(a) Overview of the scheme procedure

A scheme of arrangement is a seven-step process:

Step	
1.	Agree a transaction with a bidder: • Following due diligence and any other pre-bid steps, the first stage in the process is for the bidder and the target to negotiate and execute a Scheme Implementation Agreement and announce the transaction. • Once the deal has been agreed and the Scheme Implementation Agreement is signed, the target effectively leads each further step in the scheme process. The Scheme Implementation Agreement sets the commercial parameters of the transaction and, importantly, provides a bidder with some level of contractual control over the scheme process to ensure that the scheme is conducted appropriately and in accordance with the agreed terms of the deal. The target, however, has the greatest degree of control over implementation of the transaction.
2.	Prepare a draft Scheme Booklet for shareholders: • The Scheme Booklet is the combined notice of meeting, disclosure document and independent expert's report to be sent to target company shareholders for the purposes of convening a general meeting to vote on the scheme.
3.	ASIC review and approval of Scheme Booklet: • ASIC is entitled to review the Scheme Booklet for at least 14 days (or longer in the case of more complex schemes) prior to the first court hearing and to have an opportunity to make submissions to the court in relation to the scheme and explanatory statement. • ASIC's role is to assist the court to review the content of the scheme documents and the terms of the scheme, and to represent the interests of shareholders. This is because ASIC may be the only party appearing at the court hearing other than the target company and the bidder. ASIC also aims to ensure that all matters that are relevant to the court's decision are properly brought to the court's attention. For this reason, any complex, novel or uncertain issues in the scheme or scheme documents should be brought to ASIC's attention early, so as to ensure that ASIC can consider

Step	
	them before the hearing and advise the court that it has no objections to the scheme.
4.	First court hearing: • The target company must apply to the court for approval to convene the shareholders' meeting to consider and vote on the scheme, and to approve the draft Scheme Booklet. This first court hearing is generally held at the end of ASIC's 14-day review period. • In assessing whether or not to approve the Scheme Booklet and order a shareholders' meeting to be convened, the court will consider the structure of the proposed scheme, the adequacy of information and disclosures in the Scheme Booklet, and any objections or submissions from ASIC or other parties.

5.	Shareholder meeting and vote:
	• The shareholder approval thresholds for a scheme are:
	  • approval from more than 50% of the number of shareholders who vote at the meeting, regardless of how many shares they hold; and
	  • a special resolution of shareholders, which requires at least 75% of the number of votes cast on the resolution to be in favor of the scheme. Scheme votes are taken on a poll, which means that this test requires approval by at least 75% of the shares that are voted on the resolution.
	• In each case, the voting threshold is based on only those shareholders or shares which are actually voted (either in person or by proxy). Shares which are not voted do not count as "no" votes. The scheme meeting vote binds all shareholders, whether or not they vote on it.

6.	Second court hearing: • Once shareholders have voted to approve the scheme, a second court hearing will be held soon afterwards, at which the court will be asked to approve the scheme in order for it to become effective. • The court's focus at the second hearing is primarily on ensuring that the procedural and voting requirements for the shareholders' meeting were complied with. The court will also seek confirmation from the target and bidder that all conditions precedent in the Scheme Implementation Agreement have been satisfied.
7.	ASIC lodgment and scheme implemented: • Once the scheme is approved at the second court hearing, the court order is lodged with ASIC and the scheme becomes effective.

Step
• After the effective date, there will be a record date for determining entitlements of shareholders to participate in the scheme. Shortly after the record date, the scheme will be completed by payment of the acquisition price and transfer to the bidder of all target company shares.

(b) Scheme documents

There are several key documents required to implement a scheme of arrangement:

- Scheme Implementation Agreement (SIA) – The SIA is the primary commercial document in an acquisition by way of scheme of arrangement. Apart from setting out the terms of the transaction, including the price and conditions precedent, the role of the SIA (from the bidder's perspective) is to exercise some degree of control over the transaction, which is otherwise controlled by the target company.
- Scheme of arrangement – This is a technical procedural document that gives effect to the scheme when approved by the court and reflects the SIA terms.
- Deed poll – This is a document that binds the bidder to its obligations in the SIA. Without this document, the shareholders of the target company cannot enforce the scheme against the bidder, as a scheme is (legally speaking) an arrangement only between the target company and its shareholders.
- The key documents to be sent to shareholders for the shareholder meeting are contained in the Scheme Booklet and include the following:
- Notice of scheme meeting – The notice of meeting convenes the shareholder meeting where the scheme is to be voted on. Ordinary notice provisions apply (minimum 28 days' notice).
- Explanatory statement – This is the key disclosure document for shareholders, which should provide all relevant information for a decision whether or not to vote in favor of the scheme. It contains recommendations from directors, together with detailed reasons. It also contains disclosures from the bidder which are equivalent to the disclosures that would be made in a Bidder's Statement for a takeover offer.
- Independent expert's report – An independent expert's report opines on whether the scheme is in the "best interest" of the target company's shareholders. This report is not always required by law, but appointing an independent expert to provide a report for the benefit of shareholders is an almost invariable characteristic of schemes in Australia. Target company boards do not generally proceed with a scheme without an expert's report confirming that the scheme is in the best interests of shareholders, and is fair and reasonable. The report will typically contain a detailed review and valuation of the target company.
- All of the shareholder documents must be lodged with ASIC for a 14-day review period before they go to court, and are then reviewed and approved by the court for dispatch to shareholders.

4.4 Differences between a takeover bid and scheme of arrangement

Takeovers and schemes are quite different ways of reaching a similar outcome. Choosing the best structure for an acquisition depends on a number of factors, some of which are summarized below:

	Takeover bid	Scheme of arrangement
Control of the process	Bidder generally controls the process. Once commenced, the bidder can decide whether to waive conditions, extend the bid or increase the bid price. A takeover, unlike a scheme, can proceed with or without the target board's continued support or recommendation.	Target company runs the scheme process, including preparing shareholder meeting documents, obtaining independent expert's report, regulatory filings, and making applications to the court. A target company can break off a scheme process leaving the bidder with a break fee as its only remedy.
Going hostile	Possible to make a hostile or unsolicited bid, forcing target to respond.	Not possible, because the structure is driven by the target company.
Approval threshold	A bidder needs to achieve 90% shareholding to proceed to compulsory acquisition of the remaining shares. A higher test applies if the bidder's pre-bid holding exceeds 60%, in which case the bidder must also receive acceptances for at least 75% of the shares which it did not own at the start of the bid. However, a bidder can make the offer unconditional at any shareholding level it chooses below 90% if it does not require 100% control.	Dual voting thresholds at shareholder meeting: • 75% by number of shares voted; and • 50% by number of shareholders who vote. In each case, the test is based on only those shares which are actually voted. Shares that are not voted do not count as "no" votes. Where there are different classes, each class must separately vote and meet the thresholds. This can give holders in a small class of shares a veto power over the whole scheme. Court approval is also required.
Effect of pre-bid shareholding on approvals	Any existing shareholding counts towards the 90% compulsory acquisition threshold, making it easier to achieve. An existing holding exceeding 60% will increase the threshold (see above).	The bidder and its associates cannot vote their own shares in favor of the scheme. An option over a third party's shares, however, will not always disqualify the third party from voting.

	Takeover bid	Scheme of arrangement
Certainty of outcome	A bidder will usually have to declare its bid unconditional at an acceptance level below 90% to entice sophisticated shareholders to accept for their shares. An Institutional Acceptance Facility (IAF) can help overcome this impasse, but a bidder often has to accept the risk of falling short of 90% when it goes unconditional. This can make debt financing more difficult. A takeover structure can be to a bidder's advantage if it is content with majority control, as the bid need not be conditional on reaching compulsory acquisition thresholds.	Schemes have an "all or nothing" outcome depending on whether the approval thresholds are met, and will generally complete on a date fixed in advance by the bidder and target company. A scheme is preferable from a debt financier's perspective for this reason. Unlike a takeover bid, a bidder under a scheme of arrangement cannot settle for partial success (such as majority control) because the shareholders' approval condition cannot be waived.
Timetable and completion process	As there is no court or shareholder approval process, a takeover bid can be launched quickly. A bidder can take early acceptances (if the bid is unconditional) to gain effective control of the target company in a matter of weeks. However, a takeover will often take a long time to reach compulsory acquisition thresholds, as this depends on how quickly the remaining shareholders send in their acceptances. The compulsory acquisition process itself then takes one to two months to complete.	scheme is initially a slower process than a takeover as it requires review and approval of scheme documents by both ASIC and the court before they can be sent to shareholders, and then a minimum 28 days' notice for the shareholders' meeting. Unlike a takeover, the end date of the scheme process can be fixed and, with an "all or nothing" result, all target shares are acquired by the bidder shortly after shareholder and court approval.
Offer price	The bidder can offer cash, shares, debentures or any combination of alternatives. However, all target shareholders must be offered the same choices.	Separate and different offers are allowed. For example, equity in the bid vehicle may be offered only to target management, with cash offered to other shareholders. This will, however, create separate classes for voting purposes.
Minimum bid price	A takeover bid must offer at least the highest price paid for target company shares by the bidder (or its associates) in the four months before the bid.	No minimum offer price rule applies. However, the court may take pre-scheme purchase prices into account when exercising its discretion to approve the scheme.

	Takeover bid	Scheme of arrangement
Conditions precedent	There are some restrictions on the types of conditions precedent that can be included in an offer. For example, conditions which depend on the bidder's opinion cannot be used. A bidder can waive any condition in its discretion (other than necessary regulatory approvals).	There is no limit on types of conditions precedent, although all conditions must be either satisfied or waived by the time of the second court hearing. The bidder may not be able to waive conditions if they are expressed to be for the target's benefit.
Amending the bid or offer price	A takeover bid is very flexible. The bidder can: • waive conditions (either one by one, or all at once); • extend the bid by any length of time; • increase the offer price by any amount; or • accelerate payment terms for acceptances, in its discretion and at any time during the bid (although some restrictions apply in the final seven days of the bid period). This flexibility allows a bidder to respond quickly to a rival bidder.	The terms of a scheme cannot be amended easily. Any variation after the shareholders' meeting has been convened will usually require court consent and may require the meeting to be reconvened, which will delay the timetable. The offer price can be increased with some prior notice but it requires cooperation from the target company. Payment terms cannot be accelerated for "early acceptances" before the shareholders' meeting as it is an "all or nothing" process. These features of a scheme make it more difficult for a bidder to respond to a rival bid.

5. Timeline

5.1 Timetable for an off-market takeover bid

This indicative timetable is based on the minimum timetable for an off-market bid. References to time are calendar days, not business days (unless otherwise noted). All section references are to the Corporations Act unless otherwise indicated.

Timing	Action	Comments
On or before Day 1	Public announcement of intention to make a bid	Takeover offers must be sent to shareholders within two months of the announcement (section 631).
Day 1	Bidder's Statement (which includes the offer terms) lodged with ASIC	-

Timing	Action	Comments
Day 1	Bidder's Statement served on target and given to ASX	The Bidder's Statement must be served on the target within 21 days after it is lodged with ASIC (section 633). If the target is listed, a copy must be given to ASX. Service is usually made on the same day as ASIC lodgement.
Every day during the bid period	Bidder lodges substantial holder notices as required	The bidder must notify the target and ASX of its total voting power: • when it first makes the bid; • when its voting power reaches 5%; and • every day its voting power changes by at least 1% (for example, as it receives acceptances). The notice must be given by 9.30am on the next trading day (section 671B).
Day 15	Bidder's Statement and offer document sent to target shareholders	Dispatch of these documents must be done within a three-day period between 14 and 28 days after service on the target (section 633). The target may agree to an earlier dispatch date. In a hostile bid, an application by the target to the Takeovers Panel may delay the dispatch pending resolution of the dispute. Notice that the documents have been dispatched must be given to the target, ASIC and ASX (section 633).
By Day 30	Target's Statement sent to bidder and target shareholders	The Target's Statement must be sent no later than 15 days after the bidder sends its documents to the target's shareholders (section 633). A copy is also given to ASIC and ASX.
Any time during the offer period	Extend the offer period	A formal notice of variation is sent to the target, ASIC and offerees (section 650D). If the offer is still conditional the offer period cannot be extended

Timing	Action	Comments
		after the publication of the notice as to the status of the bid conditions (see below), unless a competing bid is announced or made after the date of publication or the consideration under a competing takeover bid is improved (section 650C). Any number of extensions can be made, up to a total offer period of 12 months (section 624(1)). An extension for more than one month (in total) will trigger withdrawal rights for previously accepted shares if the offer is still conditional.
Any day before or on the seventh day before the end of the offer period	Waive conditions of the bid	Notice waiving a condition is given to the target and ASX (section 650F). Conditions as to the non-occurrence of certain corporate actions by the target (section 652C(1) and (2) events, commonly called "**prescribed occurrences**") may be waived up to three business days after the end of the offer period.
Seven days before the end of the offer period	Publish notice as to the status of bid conditions	The offer document must specify a date between seven and 14 days before the end of the offer period for publishing this notice (section 630(1)). Seven days before the end is the day usually specified. The publication date is automatically deferred by the length of any extension in the offer period (section 630(2)). The notice is sent to the target and ASX.
Day 15 plus one calendar month	Earliest date for close of the offer period	The offer period will be automatically extended under section 624(2) if, in the last seven days, the bid price is increased or the bidder's voting power in the target increases to more than 50%. The automatic extension is to 14 days after the relevant event.

Timing	Action	Comments
Up to 21 days after the end of the offer period	Pay the bid price to accepting shareholders	The bid price must be paid by the earlier of: • the later of one month after acceptance and one month after the bid becomes unconditional; and • 21 days after the end of the offer period (section 620(2)).
Immediately after the end of the offer period	Commence compulsory acquisition procedure	A bidder which satisfies the 90% and 75% thresholds may send notices to the remaining target shareholders under section 661B to initiate the compulsory acquisition procedure. The notices must be sent within one month after the end of the offer period. The notice must be copied to ASIC and ASX.
Five business days after compulsory acquisition notices sent	Target shares are suspended from trading on ASX	This happens automatically (ASX Listing Rule 17.4).
Three business days after suspension of trading	Target is delisted by ASX	This happens automatically (ASX Listing Rule 17.14).
One month after compulsory acquisition notices sent	Complete compulsory acquisition procedure	The earliest that compulsory acquisition can be completed is one month after the notices are sent to shareholders (section 666A). However, the process can be delayed if minority shareholders apply to the court under section 661E to stop the acquisition on the grounds that the bid price is not fair value for the shares.

5.2 Timetable for an on-market takeover bid

This indicative timetable is based on the minimum timetable for an on-market takeover bid. References to time are calendar days, not business days (unless otherwise noted). All section references are to the Corporations Act unless otherwise indicated.

Timing	Action	Comments
On or before Day 1	Public announcement of intention to make a bid	The on-market takeover offer must be made within two months of the announcement (section 631).
Day 1	Bidder's Statement (which includes the offer terms) lodged with ASIC	The contents of the formal announcement are set out in the ASIC Market Integrity Rules (ASX Market), at rule 6.1.1.
Day 1	Bidder's Statement lodged with target, ASIC and ASX	This must be done on the same day as the formal announcement to ASX (section 635).
Any time on or after Day 1	Bidder may purchase shares on-market	On-market purchases can be made after the formal announcement, even before the full on-market takeover offer commences (section 611, item 2).
Every day during the bid period	Bidder lodges substantial holder notices as required	The bidder must notify the target and ASX of its total voting power: • when it first makes the bid; • when its voting power reaches 5%; and • every day its voting power changes by at least 1% (for example, as it receives acceptances). The notice must be given by 9.30am on the next trading day (section 671B).
By Day 15	Bidder's Statement sent to target shareholders	This must be done within 14 days after the formal announcement. Copies of all documents sent are lodged with ASIC and ASX (section 635).
By Day 15	Target's Statement sent to target shareholders and bidder	This must be done within 14 days after the bidder's formal announcement. Copies of all documents sent are lodged with ASIC and ASX on the same day (section 635).

Timing	Action	Comments
Day 16	Full takeover offer made on the ASX	A stockbroker acting for the bidder must make an on-market offer for all quoted shares in the target at the bid price on this day (section 635). Payment terms for on-market acquisitions (including under the bid) are full payment on the second trading day after the transaction (called "**T + 2**").
Up to five trading days before the end of the offer period	Increase the bid price	The broker acting for the bidder must publicly announce the increased price to ASX before placing the higher bid (ASIC Market Integrity Rule 6.2).
Up to five trading days before the end of the offer period	Extend the offer period	The extension is notified to ASX, the target and ASIC (section 649C). An extension cannot be made within the last five trading days of the offer period unless a competing bid is announced or made or the consideration under a competing takeover bid is improved in those last five trading days. Any number of extensions can be made, up to a total offer period of 12 months (section 624(1)).
Day 16 plus one month	Earliest date for close of the offer period	The offer period will be automatically extended under section 624(2) if, in the last seven days, the bidder's voting power in the target increases to more than 50%. The automatic extension is to 14 days after the bidder's voting power increases to more than 50%.
Immediately after the end of the offer period	Commence compulsory acquisition procedure	A bidder which satisfies the 90% and 75% thresholds (see section 9.1) may send notices to the remaining target shareholders under section 661B to initiate the compulsory acquisition procedure. The notices must be sent within one month after the end of the offer

Timing	Action	Comments
		period. The notice must be copied to ASIC and ASX.
Five business days after compulsory acquisition notices sent	Target shares are suspended from trading on ASX	This happens automatically (ASX Listing Rule 17.4).
Three business days after suspension of trading	Target is delisted by ASX	This happens automatically (ASX Listing Rule 17.14).
One month after compulsory acquisition notices sent	Complete compulsory acquisition procedure	The earliest that compulsory acquisition can be completed is one month after the notices are sent to shareholders (section 666A). However, the process can be delayed if minority shareholders apply to the court under section 661E to stop the acquisition on the grounds that the bid price is not fair value for the shares.

5.3 Timetable for a scheme of arrangement

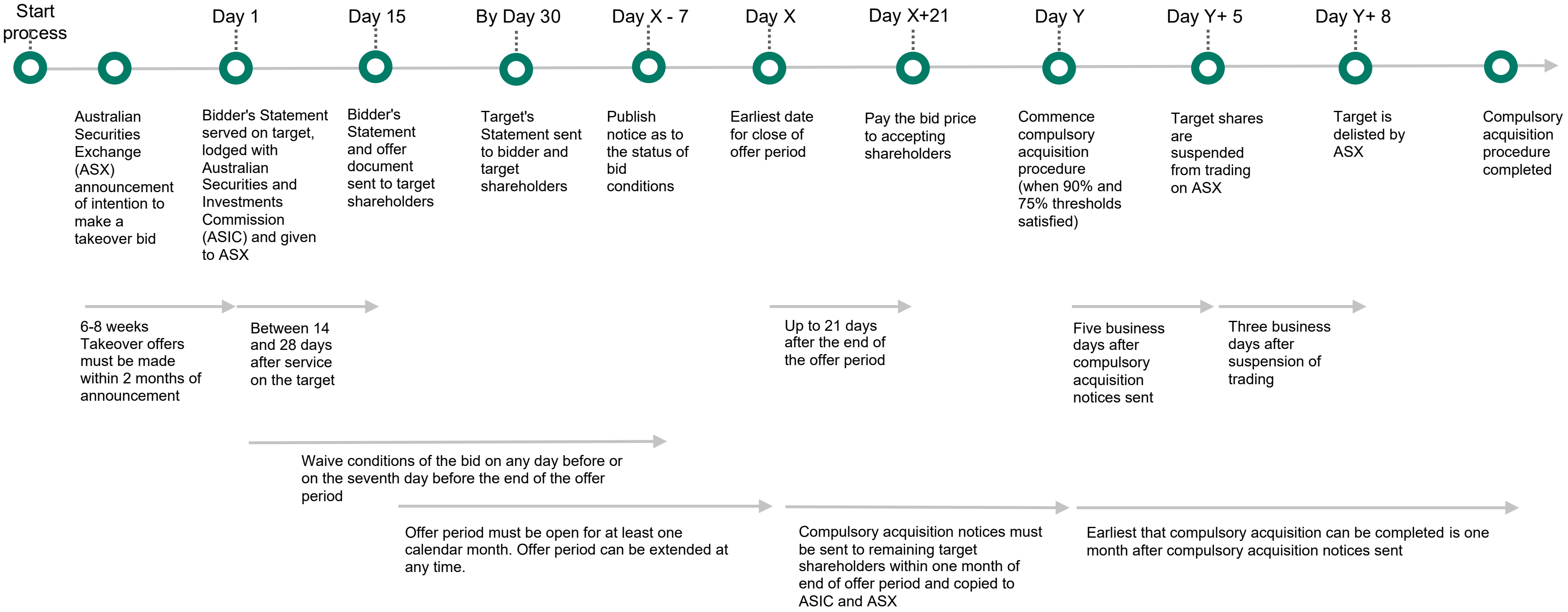
This indicative timetable is based on the minimum timetable for a scheme of arrangement. References to time are calendar days, not business days (unless otherwise noted).

Timing	Action	Comments
On or before Day 1	Public announcement of agreed scheme terms (as set out in the Scheme Implementation Agreement between bidder and target)	Unlike a takeover bid, there is no specific legal obligation to send documents to target shareholders within a particular period after the announcement.
Day 1	Lodge draft Scheme Booklet, including independent expert's report and shareholder meeting documents, with ASIC. Apply for a court date	14 days' notice must be given to ASIC prior to the first court hearing, together with draft scheme documents.
Days 1 to 14	Consider ASIC comments. Lodge final documents with the court	-
Day 15	First court hearing	14 days after ASIC lodgement.

Timing	Action	Comments
Day 22	Send Scheme Booklet and meeting documents to shareholders	Seven days assumed for printing and mailing.
Day 50	Scheme meeting	Minimum 28 days' notice of meeting.
Day 53	Second court hearing	-
Day 53	Effective Date	Lodge with ASIC a copy of the court order approving the scheme, and notify ASX. Trading in target shares is suspended from close of trading.
Day 53 + 3 business days	Record Date	The Record Date for determining entitlements to receive scheme price (three business days after the Effective Date).
By Day 63	Implementation Date	The scheme is completed, and the scheme price paid to target shareholders (usually three to five business days after Record Date).

Set out below are overviews of the main steps for a typical off-market takeover, an on-market takeover and a scheme of arrangement in Australia.

Off-market takeover offer (indicative timeline)



Start process	Australian Securities Exchange (ASX) announcement of intention to make a takeover bid
Day 1	Bidder's Statement served on target, lodged with Australian Securities and Investments Commission (ASIC) and given to ASX
Day 15	Bidder's Statement and offer document sent to target shareholders
By Day 30	Target's Statement sent to bidder and target shareholders
Day X - 7	Publish notice as to the status of bid conditions
Day X	Earliest date for close of offer period
Day X+21	Pay the bid price to accepting shareholders
Day Y	Commence compulsory acquisition procedure (when 90% and 75% thresholds satisfied)
Day Y+ 5	Target shares are suspended from trading on ASX
Day Y+ 8	Target is delisted by ASX
	Compulsory acquisition procedure completed

6-8 weeks Takeover offers must be made within 2 months of announcement

Between 14 and 28 days after service on the target

Up to 21 days after the end of the offer period

Five business days after compulsory acquisition notices sent

Three business days after suspension of trading

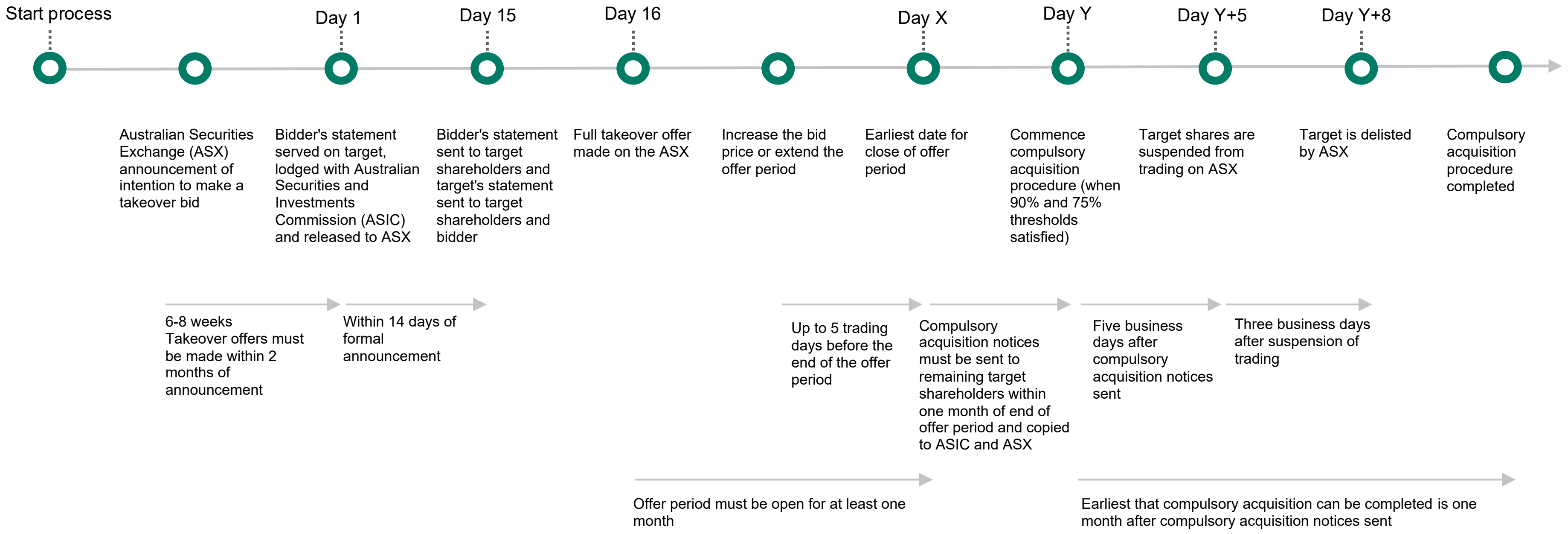
Waive conditions of the bid on any day before or on the seventh day before the end of the offer period

Offer period must be open for at least one calendar month. Offer period can be extended at any time.

Compulsory acquisition notices must be sent to remaining target shareholders within one month of end of offer period and copied to ASIC and ASX

Earliest that compulsory acquisition can be completed is one month after compulsory acquisition notices sent

On-market takeover offer (indicative timeline)



Start process

Australian Securities Exchange (ASX) announcement of intention to make a takeover bid

Day 1

Bidder's statement served on target, lodged with Australian Securities and Investments Commission (ASIC) and released to ASX

Day 15

Bidder's statement sent to target shareholders and target's statement sent to target shareholders and bidder

Day 16

Full takeover offer made on the ASX

Increase the bid price or extend the offer period

Day X

Earliest date for close of offer period

Day Y

Commence compulsory acquisition procedure (when 90% and 75% thresholds satisfied)

Day Y+5

Target shares are suspended from trading on ASX

Day Y+8

Target is delisted by ASX

Compulsory acquisition procedure completed

6-8 weeks
Takeover offers must be made within 2 months of announcement

Within 14 days of formal announcement

Up to 5 trading days before the end of the offer period

Compulsory acquisition notices must be sent to remaining target shareholders within one month of end of offer period and copied to ASIC and ASX

Five business days after compulsory acquisition notices sent

Three business days after suspension of trading

Offer period must be open for at least one month

Earliest that compulsory acquisition can be completed is one month after compulsory acquisition notices sent

Scheme of arrangement (indicative timetable)

Start process	
On or before Day 1	Public announcement on ASX of agreed scheme terms as set out in Scheme Implementation Agreement
Day 1	Lodge draft scheme booklet, including independent expert's report and shareholder documents, with Australian Securities and Investments Commission (ASIC) Apply for court date
Day 14	Consider ASIC/ASX comments Lodge final documents with court
Day 15	First court hearing (assume court date available)
Day 22	Send Scheme Booklet and meeting documents to target shareholders
Day 50	Scheme meeting
Day 53	Second court hearing Effective date. Lodge a copy of court order approving scheme with ASIC and notify ASX Trading in target shares suspended from close of trading
Day 53 + 3	Record date
Day 63	Implementation date. Scheme completed and scheme price paid to target shareholders (usually three to five days after Record date)

14 days' notice must be given to ASIC prior to the first court hearing, together with draft scheme documents

7 days assumed for printing and mailing

Minimum 28 days' notice of meeting

3 business days

6. Takeover Tactics

6.1 Transaction structure

The table in section 4.4 above, sets out the different factors that a bidder and target company may consider when choosing a transaction structure for a takeover.

The "all or nothing" outcome of a scheme generally makes it a favored acquisition structure in Australia for friendly or agreed transactions. In leveraged acquisitions, where it is essential to obtain 100% control on a certain date, it may actually be necessary to proceed by way of scheme for this reason. Likewise, a "top-hat" restructure, where all classes of shares and convertible securities are to be simultaneously exchanged for equivalent securities in a new holding company, would generally also have to be structured as a scheme for similar reasons.

A scheme of arrangement might also be attractive where special corporate actions need to be undertaken in connection with the acquisition, such as where part of the acquisition price is in the form of a share buyback or capital return that requires approval by a shareholder vote.

However, in a hostile situation, a takeover bid is the only feasible structure.

6.2 Deal protection mechanisms

In a takeover bid that is likely to be friendly or recommended, or a scheme of arrangement, it is not unusual for the target company to grant a limited exclusivity period to the bidder, during which the bidder has exclusive access to due diligence and negotiations with the target company. In return for the bidder's commitment under either type of structure, the target will usually grant the bidder:

- exclusivity, where the target gives the bidder certain exclusive negotiation and dealing rights before and after the bid is announced (discussed further below); and
- a break fee, where the target agrees to pay a specific amount to the bidder if the bid fails in certain circumstances. Where there is a break fee, there may also be a reverse break fee, where the bidder agrees to pay an amount to the target in certain circumstances. To ensure that the size of the break fee neither unacceptably pressures shareholders to approve the bid nor deters a rival bidder, the Takeovers Panel recommends that target company directors cap the maximum fee payable at 1% of the equity value of the target company at the bid price as a guideline.

The Takeovers Panel has issued a policy on break fees, exclusivity agreements and asset lock-ups (collectively termed lock-up devices) which aims to ensure that target companies do not hinder an efficient and competitive market for corporate control. The Takeovers Panel does not consider that lock-up devices are always unacceptable, but has laid down guidelines to ensure that target companies do not use lock-up devices to shut out potentially higher competing bids.

6.3 Exclusivity arrangements

An exclusivity arrangement will usually comprise a number of individual components, including the following:

- No-shop – The target company agrees not to actively solicit offers from other parties. The Takeovers Panel regards no-shop agreements as acceptable, as target directors do not have a legal duty to solicit other offers or to actively auction the company when a bid is received.
- No-talk – The target company agrees not to respond to, or even negotiate with, any third party, even if the third party makes an unsolicited approach. No-talk agreements will only be acceptable if they are subject to a carve-out, which permits target

directors to consider and recommend an unsolicited superior proposal in circumstances where it may be a breach of the directors' fiduciary or legal duties if they were to refuse to engage with the new bidder.

- Notification – A notification obligation requires the target company to notify the bidder of details of any potential competing proposals.
- Matching right – A notification right may be coupled with a matching right which allows the bidder to put forward a revised offer for the target company's shares to at least match the competing offer.

In a scheme of arrangement, the court may scrutinize an exclusivity agreement to ensure that shareholders have not been prejudiced by it. In such cases, it may be necessary to show that exclusivity was granted by the target company only after its advisers canvassed other potential bidders, and no superior transaction was considered to be available at that time.

6.4 Defensive tactics

Once a takeover bid has been announced, the defensive tactics open to a target company become very limited. For instance, there are specific restrictions on a listed target company:

- issuing any new shares, options or convertible securities without prior shareholder approval; and
- providing its directors with termination benefits that are triggered by a change in control of the company.

The target company's directors also have to contend with the Takeovers Panel's policy on "frustrating action". This policy broadly restricts the actions that a target company can undertake if the effect of the action would be to frustrate the bid and cause it to fail. The policy will apply regardless of the motives or intentions of the target company's directors.

In light of these restraints, one of the best ways for a company to prevent a hostile bid is to make arrangements well in advance of any bid being announced. Appropriate arrangements could include share placements and strategic alliances with like-minded parties, share buybacks and other capital maintenance tools, regular communication with shareholders, and other measures designed to ensure the company's share price reflects the full value of its strengths and available opportunities.

Once a hostile bid is announced, the target company's directors will often respond by attacking the Bidder's Statement or bid structure in the Takeovers Panel, or (where the bidder offers its own scrip) by attacking the value of the bidder's offer. Target company directors may also try to improve the bid price by negotiating with the bidder in exchange for a recommendation to accept the offer, or by creating an auction to attract other bidders.

6.5 Insider trading

The Corporations Act prohibits any person subscribing for, purchasing or selling shares in a company or procuring another party to do so, where that person possesses information that is not generally available and, if it were, would be expected by a reasonable person to have a material effect on the price or value of shares in that company. The person must also know or ought to reasonably be expected to know that the information is not generally available and, if it were, it might have a material effect on the price or value of those shares.

A potential bidder who is already a major shareholder in a target company or has been granted access to due diligence by the target company may be in possession of information which is not generally available and would be likely to materially affect the price of shares in the target company. Provided the information is disclosed to the market (such as in the Bidder's Statement or Target's

Statement) before any shares are acquired, contravention of the insider trading provisions is not likely to occur.

6.6 Statements of intention

A mechanism through which a bidder may build support for a takeover bid or scheme is by target shareholders making a public statement or consenting to a public statement being made which is attributed to them, to the effect that they intend to vote in favor of the scheme or accept the takeover bid (as the case may be). This attracts the "truth in takeovers" policy, under which ASIC states that it will hold target shareholders to the course of action contained in their public statements of intention, akin to a promise.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out following a takeover bid

The Corporations Act provides a statutory call option in favor of the bidder and a put option in favor of remaining target shareholders in certain circumstances. A bidder under a takeover bid may compulsorily acquire any remaining target shares if, by the end of the offer period:

- the bidder and its associates have relevant interests in 90% by number of the shares in the bid class; and
- the bidder and its associates have acquired at least 75% by number of the shares that the bidder offered to acquire under the bid (whether the acquisitions occurred under the bid or otherwise).

In the event the thresholds are reached and the bidder does not use the compulsory acquisition mechanism, the remaining shareholders have the right to require the bidder to buy their shares. Holders of non-voting shares, renounceable options and convertible notes have similar rights to have their shares acquired by the bidder.

7.2 Squeeze-out following a scheme of arrangement

Schemes have an "all or nothing" outcome depending on whether the approval thresholds are met. Accordingly, unlike a takeover bid, the scheme process results in the bidder acquiring all the target company's shares once the scheme is implemented.

8. Delisting

It is usual for a target company to be removed from the ASX following a successful takeover bid or scheme of arrangement. Following compulsory acquisition by a bidder in a takeover bid or a scheme of arrangement, the ASX automatically suspends quotation of the target company's shares. The ASX will then remove the target company from the official list at the close of trading on a date in the ASX's discretion. This is normally the third business day following suspension of the target company's shares.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Derek Pocock and Jim Peterson in the Brisbane office, Frank Castiglia, Steven Glanz, Kate Jefferson and Lance Sacks in the Sydney office and Richard Lustig and Rick Troiano in the Melbourne office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Australia.

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Austria

1. Overview

Austria's capital market is comparatively small with only about 60 companies listed on the regulated market segment of the Vienna Stock Exchange. The majority of Austrian listed companies are controlled by a dominant shareholder or group of shareholders.

Under Austrian takeover rules, there are three main types of takeover offers: mandatory bids, "voluntary" offers to acquire control and (voluntary) partial offers. The differences and specifics of these types of transactions will be discussed below (see 4). There are also separate rules regarding mandatory offers in the case of a delisting.

The competent authority tasked with supervising public takeovers in Austria is the Austrian Takeover Commission ("**ATC**"), an independent takeover regulator. Apart from supervising public takeover offers, the ATC also fulfils a number of other related functions. These include the issuance of (non-binding) opinions (*Stellungnahmen*) on questions concerning Austrian takeover law, which are typically issued at the request of an interested party, binding rulings on the application of the takeover rules, especially regarding exemptions from the duty to launch a mandatory offer, administrative criminal proceedings in cases of violations of the takeover rules, as well as ex post investigations regarding any violations of the takeover rules during an offer, or the failure to launch a mandatory bid following a change of control over a listed company.

2. General Legal Framework

2.1 Main legal framework

The main piece of takeover legislation in Austria is the Austrian Takeover Act, which has been in force since 1999 ("**Austrian Takeover Act**"). It has subsequently been amended several times, notably in 2006, when it was brought in line with the European Takeover Directive (Directive 2004/25/EC) ("**Takeover Directive**"), in 2013, when the legislator permitted (limited) judicial review of the ATC's decisions by the Austrian Supreme Court, in 2018, when new delisting rules were introduced, and finally in July 2022, when - following a recent decision of the European Court of Justice (CJEU, Case C-546/18) – a broader right to full judicial review by the Vienna Upper Regional Court was introduced. The original Austrian Takeover Act was largely modelled on the UK Takeover Code.

2.2 The Austrian Takeover Commission

Public offers and any proceedings relating to the Austrian takeover laws fall within the competence of the ATC. The ATC is a specialized supervisory authority focusing exclusively on public takeovers and adjacent matters, and as such is separate from the Austrian Financial Market Authority.

The ATC is an independent quasi-judicial body with a permanent office (employing two to four lawyers on average) with decisions rendered by one of three panels (*Senate*). Each panel consists of four members. The members of the ATC are jointly appointed by the Minister of Finance and the Minister of Justice. Each of the three consists of a chairman, one sitting judge and one member each nominated by the Austrian Chamber of Commerce and the Austrian Chamber of Labor.

All members of the ATC enjoy judicial independence in relation to their function, and government ministers have no instruction rights in relation to the activities of the ATC. With one member of each panel being a sitting judge, the ATC qualifies as an independent tribunal within the meaning of the ECHR and under Austrian constitutional law. Thus, it may rule on civil law matters as well as administrative sanctions.

Appeals against decisions of the ATC in administrative criminal proceedings are decided upon by the administrative court. Appeals against all other decisions can be lodged with the Vienna Upper Regional Court. The introduction of the Vienna Upper Regional Court's appellate jurisdiction following the 2021 European Court of Justice's decision in Case C-546/18, which held that the previous, very limited appellate jurisdiction of the Austrian Supreme Court was incompatible with EU law.

2.3 Foreign investments

The current foreign direct investment screening regime was enacted in 2020. The 2020 Austrian Investment Control Act has significantly broadened the scope of the foreign investment review process in Austria, and now covers both direct and indirect acquisitions in a wide range of sensitive sectors. It applies to acquisitions by non-EU/EEA acquirers, or involving acquirers controlled (directly or indirectly) by non-EU/EEA persons or entities.

The broad drafting of the Act means that larger transactions are generally likely to require clearance by the Federal Minister of Labor and Economy. Transactions involving companies in the relevant sectors are subject to approval if they result in the acquisition of 10% (only applicable to companies operating in highly sensitive sectors), 25% or 50% of the voting rights of a relevant target.

2.4 General principles

The Austrian Takeover Act sets out a number of general principles which essentially mirror the principles laid down in the European Takeover Directive:

- Equal treatment of shareholders - Holders of securities in listed companies must be treated equally if of the same class. This specifically applies to the treatment of shareholders holding the same class of shares in the company. The principle of equal treatment results, in particular, in the obligation of a bidder to offer all shareholders (who are of the same class) the same per-share price. Offering benefits beyond the offer price to certain shareholders or group of shareholders is not permissible. This principle applies for a period from one year prior to the public offer until 9-12 months following the completion of the public offer, subject to certain exceptions.

- Exits right upon change of control - In case of change of control over a listed company, all shareholders must be given the right to sell their shares to the bidder. This does not exclude the ability of certain shareholders to waive this right in relation to a specific bidder.

- Information and time for decision making - The addressees of a public offer must be provided with adequate information regarding the offer and need to be given sufficient time to decide upon the offer. Thus, the offer document needs to comply with certain requirements as to form and content. Furthermore, the offer period needs to be two weeks minimum, whereas the vast majority of public offers in Austria provide for offer periods exceeding the two-week minimum. There is no first come first served principle.

- No obstruction of the target company - Notwithstanding the general principle above, public offers need to be conducted quickly. The reason behind this principle is that the management of a target company should not extensively be occupied with takeover offers instead of managing the target company's business. As a consequence of this principle, bidders who have failed to successfully complete their offers, i.e., the minimum acceptance requirement has not been fulfilled in the case of an offer to acquire control, are, in general, precluded from launching another offer within a period of one year (the so-called 'blocking period'). However, the bidder is exempted from this rule if the interests of the target company and its shareholders are not endangered, which is usually the case if the second offer is friendly and an attractive price is offered.

- Duty of the target company's boards - In case of a public offer, the management and supervisory boards of the target company must act in the interests of the shareholders, the employees and the creditors, and also needs to take public interests into consideration. Although this principle suggests that the boards may also frustrate a bid if not in the interest of a certain party, e.g., the employees, the boards are nevertheless bound by a strict neutrality rule (provided for under § 12 of the Austrian Takeover Act), requiring the boards to abstain from any action that may deprive the shareholders from their right to make a free and informed decision about the public offer. In general, the boards may only take defense measures against a hostile offer if (i) authorized by the general meeting of the target company or (ii) the boards have partly implemented such measures at the time the bidder announces its intention to launch a bid.
- Prevention of market distortions - Steps must be taken to prevent any distortion of the normal market functioning and pricing, in particular, with respect to the shares of the target company and the bidder company, in the course of a public offer.

3. Before a Public Takeover Bid

3.1 Secrecy and bid announcement

Under Austrian takeover law, an acquirer may confidentially negotiate with the target company board and/or a significant shareholder in the target company before making any announcement about a possible takeover offer. Both the potential bidder and the target management must ensure the secrecy of any negotiations. However, as soon as there are significant price movements in target company shares or in case of market rumors regarding a possible offer by the bidder, both the bidder and the target company have an obligation to disclose the fact that the bidder contemplates or intends to make a takeover offer for the target company. Moreover, the bidder must, in any event, disclose its intention to launch a takeover offer as soon as its board(s) has(have) resolved to do so.

3.2 Overview of shareholder rights in Austrian listed companies

Potential bidders may aim to acquire a minority stake in the target before launching a public takeover. The following table summarizes some voting thresholds relevant for public takeovers according to general Austrian company law. The available and exercisable rights may differ significantly depending, among other things, on a company's articles of association.

Percentage of total voting rights	Relevant rights
1%+	Shareholders can make proposals for resolutions upon agenda items of the general meeting.
5%+	Rights include ability to call extraordinary general meeting and request agenda items.
10%+	Shareholder can request a special investigation into company affairs by an independent expert.
25%+	Shareholder can block certain important general meeting decisions, including share issuances, disapplication of pre-emption rights,

Percentage of total voting rights	Relevant rights
	changes to the articles of association, removal of supervisory board members, and statutory mergers. (Some of these blocking rights are subject to the company's articles of association.)
26%+	In listed companies, voting rights of shares acquired after passing the 26% threshold cannot be exercised (effectively a statutory voting cap at 26%) unless a general takeover offer is made (subject to exceptions).
30%+	Control threshold triggering the mandatory bid rule.
50%+	Legal control, i.e., ensuring shareholder can take decisions the general meeting may adopt with simple majority, including appointment of supervisory board members (subject to limited minority shareholder rights), which in turn appoints the management board. Exact rights depend on the company's articles of association.
75%	Shareholder rights include the issuances of shares with or without pre-emption rights, changes to the articles of association, removal of supervisory board members, statutory mergers, and other restructurings (subject to the company's articles of association).
90%	Right to squeeze out the minority shareholders against fair cash compensation.

Where only a minority interest is sought in an Austrian company, this can be acquired via either open market purchases or through a partial offer (as long as the bidder does not acquire more than 30% of the total voting shares following the completion of the takeover offer). In the latter case, the procedural rules of the Austrian Takeover Act generally apply in full. In particular, the acquirer needs to file the offer document with the ATC and needs to adhere to the offer timetable. However, the acquirer is free to set the offer price in a partial offer, meaning past purchases by the bidder do not result in a minimum offer price. Nevertheless, the bidder must not pay a higher price than the offer price once the partial bid has been announced. Partial offers are described in more detail below (see 4).

3.3 Mandatory offer threshold

Under Austrian takeover law, any person or group of persons (parties acting in concert) obtaining control (see 4.2) over a listed company is obliged to make a general cash offer to all shareholders of the target company to acquire any or all of the company's outstanding shares. The mandatory bid rule is triggered where a person or group of persons acquires more than 30% of the voting rights attached to the company's shares.

4. Effecting a Takeover

4.1 General

In Austria, acquirers typically obtain control over listed companies in one of two ways. First, as most listed Austrian companies have a controlling shareholder, the acquirer may privately negotiate an acquisition of the controlling block of shares from the incumbent dominant shareholder. If successful, this transaction will typically trigger a mandatory bid and will thus be followed by a general cash offer to the remaining shareholders (see below). Where the acquirer follows this path, it is quite common in practice for the acquirer to conduct a (limited) due diligence review, and the agreement with the incumbent controller will often contain extensive representations and warranties in relation to the target company and its business.

Second, control can also be obtained by a general offer (a 'voluntary offer to acquire control'). Such offers may be launched regardless of whether or not the target company has a dominant shareholder, and they are subject to a statutory minimum acceptance threshold of 50% of the offer's addressees. The procedure is set out in more detail below.

It is far less common for listed companies to be acquired through statutory mergers, which in Austria require the payment of all or a substantial part of the consideration in shares of the surviving company. Triangular and/or cash-out mergers are not currently available to Austrian-incorporated companies.

4.2 Definition of control

Public offers are often launched as mandatory bids following a change of control over the target company. Control is defined in § 22 of the Austrian Takeover Act. Pursuant to this rule, control is deemed to have been obtained if a person owns or controls more than 30% of the voting shares in a company (controlling stake). Special rules apply in case control is obtained indirectly, e.g., by obtaining control over another company directly or indirectly holding a controlling stake in the listed target. In that case, where the company directly holding a controlling stake in the target is itself a listed company (pyramid structure), control is defined as above, i.e., with reference to the 30% threshold. However, where the direct controller is a closely held company, the ATC will determine whether or not control over that company has changed based on an assessment of the de facto influence of the (indirect) acquirer.

However, even where the 30% threshold is crossed, a shareholder will only be deemed to have acquired control if it has, in light of the shareholder structure and the usual attendance of shareholders in the annual general meeting, the majority of the voting rights in the shareholders' meeting of the target company.

4.3 Parties acting in concert

Shareholders acting jointly to acquire or exercise control over a listed company, e.g., by coordinating the exercise of voting rights in the company's general meeting, are regarded as parties acting in concert. Shareholdings of the concert party are aggregated for the purposes of the mandatory bid rule (as well as in relation to significant shareholding disclosure rules).

4.4 Mandatory bid rule

A change of control over a listed Austrian company generally triggers an obligation for the new controlling shareholder (or group of shareholders/ shareholders acting in concert) to launch a mandatory offer to all other shareholders of the target company.

However, control may not only be acquired by direct or indirect acquisition of a controlling stake, but also by changes in the composition of a group of shareholders exercising joint control over a listed company, and even if the rights and obligations of the members within such group are amended, provided that such amendments result in a change of control within the group of shareholders.

A change of control within a group of shareholders requires all members of this group to launch a mandatory offer to all other shareholders of the company, provided that group of shareholders holds a controlling stake in that company.

Furthermore, a mandatory offers needs to be made if a controlling shareholder who holds more than 30% but less than 50% of the shares with voting rights acquires an additional (net) 3% or more of shares in the target company within a period of 1 year (creeping-in rule). The purpose of the creeping-in rule is basically to prevent circumvention of the mandatory bid rule.

4.5 Offers to acquire control

If a bidder owns less than 30% of the shares or no shares at all in the target company, it may launch an offer to acquire control. In order for such offer to be successful, the bidder will need to receive acceptances for more than 50% of the shares subject to the public offer (the 'market test'), whereas the bidder may voluntarily set a higher threshold, such as 75% or 90%. The latter threshold may be attractive for the bidder since, as a consequence of acquiring more than 90% of shares in the target company, the bidder may squeeze out the remaining shareholders and delist the target company (see 7).

Since, in the course of an offer to acquire control, the bidder will, if successful, end up with a controlling stake in the target company, most of the rules applicable to mandatory bids also apply to offers to acquire control.

4.6 Important rules only applicable to mandatory offers

- Unconditional offer - Other than offers to acquire control, mandatory offers may not be subject to any conditions. This is because the bidder acquires control in the first place. If the bidder was permitted to make its offer subject to conditions, the control it has acquired would not fall away in case of non- fulfilment of the conditions set. This would not only contravene the principle set out above under 2.3, but it would also contravene the Takeover Directive.

- Sufficient funds - A bidder may only acquire control if it has made sure that it has sufficient funds available to pay the offer price.

- Filing period of 20 trading days - Other than for all other types of offers, the bidder is required to file its offer document within a period of 20 trading days following the announcement of the offer (the filing period for all other types of offers is between 10 and 40 trading days).

4.7 Important rules applicable to mandatory offers and offers to acquire control

- Minimum price rule - The price offered to the shareholders of the target company must not fall short of the highest price paid by the bidder or any party acting in concert with the bidder within the period of 12 months prior to the filing of the offer document with the ATC. Furthermore, the offer price must at least correspond to the average market price of the shares in the target company within a period of six months prior to the bidder announcing its intention to launch an offer.

- Sufficient funds - A bidder may only announce the launch of an offer if it has sufficient funds available to pay the offer price.

- No parallel transactions - Once a public offer is made, the bidder and the parties acting in concert with the bidder must not acquire shares for a consideration higher than the offer price. If they do, the offer price must be increased to a level corresponding to the higher price paid.

- Mandatory cash offer - Although barter offers (where shares in the bidder company are offered for shares in the target company) are permitted under Austrian laws, a mandatory offer must include a mere cash alternative.

- Subsequent offer period - In case of a mandatory bid or a successful bid to acquire control, the offer must be extended by the bidder for another three months following the elapse of the initial acceptance period. This is mainly to give shareholders who have rejected the offer in the first place the opportunity to exit the company rather than stay in the company together with a bidder they have rejected.
- Equal treatment within another nine-month period - Within another period of nine months following the subsequent offer period, the bidder and parties acting in concert with the bidders must not pay a price for shares in the target company higher than the offer price. Exempted from this rule are, most importantly, higher payments of the bidder in the course of a squeeze-out or certain capital measures, such as a capital increase.

4.8 Partial offers

For partial offers, some of the important rules applicable to mandatory offers and offers to acquire control do not apply, such as the minimum price rule and the mandatory cash offer rule. Furthermore, as in case of offers to acquire control, partial offers may be subject to conditions.

Partial offers may be launched in the following scenarios:

- a person initially holding no shares in the target company or a shareholder holding a small stake in the target company intends to acquire such number of shares in the target company so that they end up with less than 30% of the shares with voting rights;
- the core shareholder holding more that 50% of the shares in the target company intends to increase its stake in the target company up to a certain threshold, such as 90%; and
- a company intends to acquire up to 10% of its own shares.

Even in the case of partial offers, the principle of equal treatment applies and no shareholders may be excluded from the offer. In case of oversubscription, the bidder must acquire the tendered shares pro rata.

5. Timeline

In a typical friendly acquisition, following successful negotiations with target management and, where applicable, the controlling shareholder or group of shareholders of the target company, a typical timeline would look as follows:

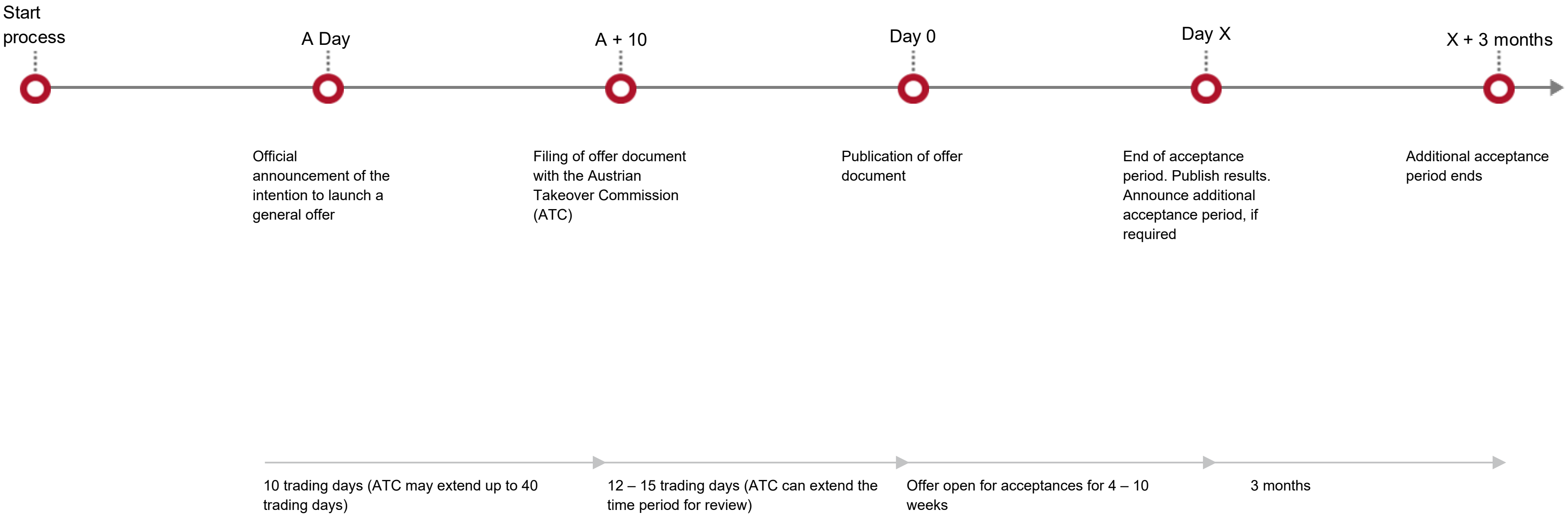
Date	Step
	Official announcement of the intention to launch a general offer.
Before filing offer document	Preparation of offer document, including expert's report and confirmation of financing arrangements.
10 trading days after announcement of offer (ATC may extend this by to up to 40 trading days)	Filing of offer document with the ATC, which will review the document. In practice, the bidder will typically discuss the structure of the offer and the offer document with the ATC between filing and publication and make amendments where requested by the ATC.

Date	Step
12-15 trading days after filing of offer document	Publication of offer document, unless the ATC formally prohibits publication or extends time for review of the document.
Between four and 10 weeks after publication of offer document	Offer open for acceptances.
Immediately after end of the acceptance period	Publication of results, including announcement of additional acceptance period, where applicable.
Period of three months after publication of offer results	Additional acceptance period in the case of mandatory bids and whenever an offer was subject to a minimum acceptance condition.

Where a competing offer is made, the acceptance period of the original offer will automatically be extended to match the competing offer's timeline, unless the original bidder has retained the right to withdraw its offer in case of a more favorable competing bid and chooses to exercise this right.

Set out below is an overview of the main steps for a takeover offer in Austria.

Takeover offer (indicative timeline)



Start process	A Day	A + 10	Day 0	Day X	X + 3 months
	Official announcement of the intention to launch a general offer	Filing of offer document with the Austrian Takeover Commission (ATC)	Publication of offer document	End of acceptance period. Publish results. Announce additional acceptance period, if required	Additional acceptance period ends

10 trading days (ATC may extend up to 40 trading days)

12 – 15 trading days (ATC can extend the time period for review)

Offer open for acceptances for 4 – 10 weeks

3 months

6. Takeover Tactics

6.1 Hostile vs. friendly transactions

As mentioned above, Austria has implemented the so-called non-frustration rule, essentially outlawing most forms of post-bid defensive actions by the target board. However, given the traditionally concentrated ownership structures of most Austrian listed companies, only relatively few hostile transactions have taken place in the Austrian market in the past.

Over the past decade, the number of listed companies with dispersed ownership, or without a strong controlling shareholder, has increased. This has led to an increased interest by Austrian companies in pre-bid takeover defenses, which - unlike defensive actions taken by the target board after a bid has been announced - are legal under Austrian law, provided that adopting the pre-bid defenses is compatible with directors' duties. Pre-bid defenses may include, for instance, generous change of control clauses in financing agreements, conditional sales of joint venture shares, or amendments to the company's articles, e.g., providing for higher approval thresholds for significant corporate restructurings.

6.2 Stakebuilding

In practice, acquirers rarely acquire minority shareholdings (toeholds) in target companies before launching a general control-seeking offer. Open market purchases are subject to the rules on disclosure of substantial shareholdings, which require the disclosure when an investor exceeds 4% of the company's voting rights. Subsequent disclosure thresholds are set at 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90% of the voting rights. The lowest disclosure threshold can be set at 3% in the company's articles of association, and a number of Austrian companies have made use of this right.

Importantly, any stakebuilding through open market purchases must not be structured in a way that may be considered to constitute a public offer, or a public solicitation of offers from investors, as such public offers and solicitations are subject to the procedural rules of the Austrian Takeover Act.

6.3 Due diligence

When preparing/negotiating a friendly acquisition, it is quite common for target management to allow a due diligence review by the potential acquirer or to otherwise disclose material non-public information. Any such agreement will be subject to the conclusion of an NDA, and appropriate safeguards will have to be put in place to ensure compliance with the (EU-wide) rules on market abuse. The decision on whether or not to disclose any non-public information to the potential acquirer falls within the business judgment of the target company's board, and directors will have to exercise their discretion in accordance with their fiduciary obligations to the company.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

After a successful takeover, the bidder may squeeze-out the remaining minority shareholders, provided the bidder holds no less than 90% of the target shares. The minority shareholders to be squeezed-out have the right to receive an adequate compensation in cash for their shares.

Before the squeeze-out, the target company's management and the dominant shareholder must draw up a report explaining and justifying the cash compensation offered, and a court-appointed expert must examine the accuracy of the report as well as the offered cash compensation. Furthermore, the supervisory board also needs to examine the reports by management and the court-appointed expert and report its findings in writing.

Target company shareholders are given access to the reports mentioned above at least one month before the general meeting at which the squeeze- out is to be resolved. Minority shareholders may challenge the adequacy of the cash compensation in a squeeze-out in court, but the squeeze-out will still become effective, i.e., the shares will be transferred to the 90%+ shareholder, notwithstanding any such challenge. In practice, legal disputes concerning the adequate cash compensation often drag on for several years, and typically are ultimately settled by the parties involved.

Where a general meeting resolution to squeeze out the minority is taken within three months of a successful takeover offer, and provided that the offer was accepted by at least 90% of its addressees, the consideration offered in the takeover offer will be deemed to be adequate for purposes of the squeeze-out.

8. Delisting

Public companies listed in the regulated market segment (*Amtlicher Handel*) are usually taken private by a combination of a public takeover offer (sometimes with a minimum acceptance condition at 90%) followed by a squeeze-out, as described above. Further, for scenarios where no shareholder holds more than 90% of the shares, a new delisting procedure was enacted by the Amendment of the Austrian Stock Exchange Act 2018, requiring the following:

- The public company's shares must have been listed for a period of at least three years.
- The approval of the general meeting to withdraw the public company from the regulated market segment must be given with a supermajority of 75% of the voting rights, or a respective request of shareholders jointly holding 75% of the share capital must be filed.
- Protection of the minority shareholders may not be jeopardized. This will be deemed to be the case if (i) a public takeover offer is launched to which specific (additional) minimum price rules apply, or (ii) after its delisting from the Vienna Stock Exchange, the public company remains listed on a regulated market of an EEA member state (in which case the minimum listing period above is reduced to one year).

The requirement to launch a public takeover offer also applies to cross-border and domestic mergers, to de-mergers and other restructurings which result in a delisting of a public company.

For other listed companies, a voluntary delisting can be requested by the company.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Dr. Gerhard Hermann and Dr. Eva-Maria Ségur-Cabanac in the Vienna office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Austria.

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Belgium

1. Overview

With about 65 public M&A transactions since 2010, Belgium has had its fair share of public takeover activity. Roughly one-third of these public M&A transactions can be qualified as mandatory takeover bids, while the other two-thirds were of a voluntary nature. In recent years, a number of takeover bids were made by existing (reference) shareholders in an effort to go private and delist the target company.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Belgian law relating to public takeover bids can be found in:

- the Belgian Act of 1 April 2007, on public takeover bids;
- the Belgian Royal Decree of 27 April 2007, on public takeover bids;
- the Belgian Royal Decree of 27 April 2007, on public squeeze- out bids; and
- the Belgian Companies and Associations Code of 23 March 2019 (as amended from time to time).

The main body of the Belgian takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**EU Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the EU Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid for the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

In addition to the aforementioned rules, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

- the rules relating to the disclosure of significant shareholdings in listed companies. These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2014, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (as amended from time to time) and related EU legislation. For further information, see also 3.5;
- the rules relating to insider dealing and market manipulation (the so-called 'market abuse rules'). These rules are based on Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014, on market abuse, as amended from time to time ("**EU Market Abuse Regulation**"), and related EU legislation. For further information, see also 6.2;
- the rules relating to the public offering of securities and the admission to trading of these securities on a regulated market. These rules are primarily set out in Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on

the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as amended from time to time;

- the general rules on the supervision and control over the financial markets; and
- the rules and regulations regarding merger control (these rules and regulations are not further discussed herein).

2.3 Scope of the Belgian takeover rules

The Belgian takeover bid rules apply in the first instance to public takeover bids with respect to Belgian companies listed on a Belgian securities market.

The main securities markets in Belgium are the markets organized by Euronext, consisting notably of the regulated market of Euronext Brussels and a few multi-lateral trading facilities that are not regulated markets, such as Euronext Growth (the former Alternext) and Euronext Access (the former Free Market).

The Belgian takeover bid rules also apply in whole or in part to public takeover bids for Belgian issuers listed elsewhere in or outside of the EEA, public takeover bids for foreign issuers listed in Belgium and public takeover bids for foreign issuers that are not listed in Belgium but which qualify as a public takeover bid in Belgium because of the number of security holders that are solicited (or deemed to be solicited) in Belgium. The Belgian takeover bid rules contain specific criteria and conflicts of law rules to determine the applicable law and procedure for public takeover bids with cross-border aspects, such as takeover bids for foreign issuers listed in Belgium and takeover bids for Belgian companies with one or more listings outside of Belgium. These rules are based on the EU Takeover Directive.

Conceptually, the Belgian public takeover bid rules also apply (in part) to tender offers for bonds and other debt instruments, as well as self-tender offers by issuers that wish to acquire their own shares.

The remainder of this chapter deals with public takeover bids for Belgian companies listed on the regulated market of Euronext Brussels, which is the most common type of public takeover bid in Belgium.

2.4 Supervision and enforcement by the FSMA

Public takeover bids are subject to the supervision and control of the Belgian Financial Services and Markets Authority ("**FSMA**"). The FSMA is the principal securities regulator in Belgium.

The FSMA has a number of legal tools that it can use to supervise and enforce compliance with the Belgian public takeover bid rules, including administrative fines. In addition, criminal penalties may be imposed by the courts in cases of non-compliance.

The FSMA also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid in Belgium.

2.5 General principles

The following general principles apply to public takeovers in Belgium. These rules are based on the EU Takeover Directive:

- all holders of the securities of the same class of a target company must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

- the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid; the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
- the board of a target company must act in the interests of the company as a whole;
- false markets must not be created in the securities of the target company, of the bidder company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- a bidder must announce a bid only after ensuring that they can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
- a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2.6 Foreign investments

Belgium has a foreign investment screening procedure targeted at purchasers which are not EU-based or which do not have an EU-based ultimate beneficial owner. If such a purchaser is involved in a transaction whereby

- control or voting rights in excess of 25% (or even 10% in some specific cases) are acquired over the target group, and
- the activities of the target group touch upon or relate to certain (broadly described) sensitive activities or assets including (i) the critical infrastructure space, (ii) critical technologies, (iii) supply of "critical inputs" (such as energy, raw materials and even food security), (iv) access to sensitive information, personal information and the ability to control such information, (v) private security, (vi) the freedom and pluralism of the media, and (vii) technologies of strategic importance in biotech,

then the acquisition will need to be notified to the Belgian Interfederal Screening Commission ("**ISC**") and will require clearance prior to being completed.

As from the day that the file is deemed complete by the ISC, a 30-day verification phase (Phase I) will start. During this verification phase, the relevant members of the ISC will review the main characteristics of transaction and the purchaser and whether the transaction can have a potential impact on public order, security, or the strategic interests of the relevant regions or communities. The 30-calendar day timeline can be extended and suspended for a number of reasons. If no formal decision is taken at the end of the 30 calendar day period (as extended, as the case may be), the transaction is deemed to be approved. If one of the competent members would identify specific circumstances that can give rise to a potential impact on public order, security or strategic interests, the ISC will proceed to the actual screening phase (Phase II). If a Phase II investigation is opened, the ISC has 28 calendar days to complete the investigation and notify the investor of the outcome thereof. Please note however that also in Phase II, the term can be extended and suspended for a variety of reasons. The outcome of a Phase II investigation is either an approval, a conditional approval or a negative decision which prohibits the transaction from completing.

2.7 Proposed reforms

The FSMA issues from time to time practical guidance and regulations as to how the Belgian takeover bid rules should be interpreted and applied. At the date of this publication, no fundamental reforms to Belgian takeover rules are currently envisaged.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the respective rights and powers that typically apply to different levels of shareholding within a Belgian listed limited liability company (*naamloze vennootschap/société anonyme*) whose shares are listed on the regulated market of Euronext Brussels:

Shareholding	Rights
1. One share	• The right to attend and vote at general shareholders' meetings. • The right to challenge resolutions of general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons. • In case of a merger or de-merger, the right to file a liability claim against directors or to request the nullity of the merger or de- merger. • The right to petition the enterprise court for the dissolution of the company (a) for legal reasons, or (b) if, due to losses incurred, the ratio of net assets to share capital (on an unconsolidated basis in accordance with Belgian accounting law) is lower than EUR 61,500. The right to petition the court in case of (b) is also available to any interested party, including also creditors of the company.
2. 1% or shares representing EUR 1,250,000 of its share capital	• The right to file a minority claim against the directors on behalf of the company. • The right to ask, subject to certain conditions, the Enterprise Court to appoint an expert to review accounting records and acts of the company's corporate bodies.

Shareholding		Rights
3.	3%	The right to put additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda.
4.	10%	The right to request the board of directors to convene a general shareholders' meeting.
5.	More than 20% of the votes at a general shareholder's meeting(1)	The right to block changes to the corporate purpose clause of the company.
6.	25% of the votes at a general shareholders' meeting	The ability to require the dissolution of the company if the ratio of the company's statutory (unconsolidated) net equity to the company's share capital has dropped below 25%.
7.	More than 25% of the votes at a general shareholders' meeting(1)	The ability at a general shareholders' meeting to block: • any other changes to the articles of association, mergers, de-mergers, capital increases, capital reductions, and dissolutions of the company (subject to item 6 above); • the authorization of the board of directors to increase the company's share capital without further shareholder approval (the so-called "**authorized capital**"); and • the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or subscription rights (warrants).
8.	30%	The ability to petition the Commercial Court to squeeze out a shareholder and force the shareholder to sell its stake to the plaintiff for good cause.
9.	More than 33.33% of the votes at a general shareholders' meeting	The ability at a general shareholders' meeting to block amendments to the articles of association in order to introduce the double "loyalty" vote for shareholders.
10.	More than 50% of the votes at a general shareholders' meeting	Legal control and the ability at a general shareholders' meeting to: • appoint and dismiss directors and to approve the remuneration and, as relevant, severance package of directors; • approve certain aspects of the remuneration and severance package of executive management;

Shareholding	Rights
	- appoint and dismiss statutory auditors and to approve their remuneration; - approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors); - grant discharge from liability to the directors and statutory auditor for the performance of their mandate; - take decisions for which no special majority is required; - take decisions which grant to third parties rights that have a significant influence on the company's assets or create a significant debt or liability at its expense where the exercise thereof is conditional on a change of control over the company; and - take decisions concerning a transfer of assets that relate to three quarters or more of the assets of the company.
11. 66.66% of the votes at a general shareholders' meeting(1)	The ability at a general shareholders' meeting to approve amendments to the articles of association in order to introduce the double "loyalty" vote for shareholders.
12. 75% of the votes at a general shareholders' meeting(1)	The ability at a general shareholders' meeting to approve: - any changes to the articles of association (other than changes to the corporate purpose clause), mergers, de-mergers, capital increases, capital reductions, and dissolution of the company (subject to item 6 above); - the authorization of the board of directors to increase the company's share capital without further shareholder approval (the so-called authorized capital); - the dis-application (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or subscription rights (warrants); and - the cross-border conversion of the company.
13. 80% of the votes at a general shareholders' meeting(1)	The ability at a general shareholders' meeting to approve: - changes to the corporate purpose clause of the company; and - the authorization of the board to repurchase or dispose of the company's shares.

Shareholding	Rights
14. 95%	The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**").

Note: (1) In order to exercise these voting rights, the general shareholders' meeting must have an attendance of at least 50% of the outstanding shares representing the share capital. If this attendance requirement is not met and if a new general shareholders' meeting is convened with the same agenda, the attendance requirement does not apply at the new meeting.

3.2 Restrictions and careful planning

Belgian law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid. See also 4.3 (below).

3.3 Acting in concert

The Belgian takeover rules contain specific provisions that apply to persons that "act in concert". A notable example is the obligation that applies if one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 30% threshold. In such case, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 30% threshold. It should be noted that the 30% threshold refers to the number of securities with voting rights, and not the number of voting rights. Accordingly, the double voting right for listed companies, which is permitted under the Belgian Companies and Associations Code, will not be taken into account for the purpose of the takeover rules set out in the Belgian Act of 1 April 2007 on public takeover bids.

For the purpose of the Belgian takeover bid rules, persons "act in concert" if they:

- collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement, aimed at acquiring control over the target company, frustrating the success of a takeover bid, or maintaining control over the target company; or
- have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy vis-à-vis the target company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert. An entity is an affiliate of another entity if it is controlled by the latter entity, or if it is controlled by the same entity as the latter entity. The concept of control is defined as the de jure or de facto ability to exercise a decisive influence over the appointment or dismissal of directors of the target company, or over the orientation of the target company's policies.

Based on these definitions and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. This is, for example, the case where a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad, and in practice many issues can arise to determine whether persons act or do not act in concert. The FSMA and the Markets Court, which has jurisdiction over claims related to the Belgian takeover bid rules, also appear to adhere to a very broad interpretation of "acting in concert".

3.4 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules prohibit insider dealing, improper disclosure of inside information and misuse of information (see 6.2).

3.5 Disclosure of shareholdings and trading

The general rules regarding the disclosure of significant shareholdings apply before and during a public takeover bid. Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure thresholds in Belgium are 5% and multiples of 5% (10%, 15%, etc.). Several listed companies also apply a lower threshold than the initial threshold of 5% (in most cases 3%). Additional thresholds can also apply. When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.3). These parties include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements such as call option agreements.

As of the announcement of the public takeover bid, the bidder must disclose the number of voting securities it already has in the target company. Furthermore, as from the announcement, additional disclosures will need to be made by the target company as well as the bidder, persons acting in concert with the bidder or the target company, and certain other persons. Notably, each business day during the takeover bid period, the target company (or the other aforementioned persons, as relevant) must inform the FSMA of the acquisition or disposal of voting securities (or securities conferring the right to voting rights) issued by the target company, the bidder or the company whose securities are offered as consideration in the takeover bid (as the case may be).

3.6 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must as soon as possible announce all inside information (see 6.2). The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. This could, for instance, be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted if the non-disclosure does not entail the risk that the public is misled, and that the company can keep the relevant information confidential. The target company will have to provide a written explanation to the FSMA of how these conditions are being met.

3.7 Announcements of a public takeover bid

Pursuant to Belgian public takeover bid rules, only the FSMA can announce a public takeover bid. Prior to the public announcement of the takeover bid by the FSMA, no-one is permitted to announce the launching of a public takeover bid. This prohibition does not only apply to a bidder, but also to the target company even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.6.

A bidder that intends to announce a public takeover bid must first inform the FSMA of its intention and obtain the FSMA's permission to make the announcement. In addition, the bidder will at that time have to make the necessary filings for the actual launching of a public takeover bid (including providing proof of certainty of funds in the event the offer includes cash, and a draft prospectus), since as soon as the public takeover bid is announced, it can normally no longer be withdrawn (except in certain circumstances).

If there are rumors or leaks that a potential bidder intends to launch a public takeover bid, the FSMA could force a party to make an announcement as to its intentions regarding a public takeover bid (see 3.8).

Specific rules apply to self-tenders by the issuer of securities.

3.8 Early disclosures – Put-up or shut-up

(a) Early disclosures required by the FSMA - Whenever required for the good functioning of the markets, the FSMA has the right to request that a person that could be involved in a possible public takeover bid make an announcement without delay. If the latter person does not make such disclosure, the FSMA can make the announcement instead. This type of disclosure is often made when the takeover bid cannot yet be formally launched, e.g., for practical purposes or due to certain third party approvals, but an announcement is nevertheless appropriate to inform the market.

(b) Put-up or shut-up - The FSMA can also force a person to make an announcement as to whether or not they intend to carry out a public takeover bid if this person (themselves, or via intermediaries) made statements that have raised questions with the public as to such person's intentions. The FSMA can impose a maximum window of 10 business days within which the announcement must be made. A person that confirms their intention to launch a public takeover bid must launch such takeover bid within a term to be agreed upon with the FSMA. If a person does not confirm, within the term imposed by the FSMA, their intention to launch a public takeover bid within a reasonable period, they cannot (and the persons acting in concert with him/her cannot) launch a takeover bid for the securities of the target company for a term of six months following the publication of such announcement (or the expiry of the term imposed by the FSMA to make such announcement).

3.9 Due diligence

The Belgian public takeover bid rules do not contain specific rules regarding the question of whether a prior due diligence can be organized, nor how such due diligence should be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted by the market and the FSMA. Appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

Due diligence is usually only made possible in a friendly takeover scenario. A target company will normally allow due diligence on non-public information only after having received a serious indication of interest by the potential bidder. Customarily, the due diligence of non-public information will be less comprehensive than in a private acquisition context.

In the event of a counter bid, the counter bidder may request access to the same information that was made available by the target company to the first bidder.

The mere fact of having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed to constitute insider dealing, provided that the inside information has been made public or has otherwise ceased to constitute inside information, e.g., via disclosure in the prospectus of the bidder, or a disclosure by the target company (see 6.2).

4. Effecting a Takeover

4.1 Types of public takeover bid

The public takeover bid is the most common type of transaction that is used in Belgium to effect a takeover of a listed company in Belgium.

The public takeover bid is, in essence, a contractual offer by a bidder to acquire the shares (and other securities conferring voting rights) issued by the target company. There are three main forms of takeover bids in Belgium, namely the voluntary takeover bid, the mandatory takeover bid, and the squeeze-out bid:

- Voluntary public takeover bid - This is a public takeover bid in which a bidder makes an offer on a voluntary basis for all of the voting securities issued by the target. Subject to certain restrictions, the takeover bid can contain limited conditions precedent, allowing the bidder to withdraw the takeover bid if the conditions precedent have not been met such as a minimum acceptance level, and the absence of material adverse changes (see 4.2).
- Mandatory public takeover bid - This is a public takeover that a bidder is obliged to make if, as a result of an acquisition of voting securities, the bidder (alone or in concert with others) crosses a threshold of more than 30% of the outstanding voting securities of the target company. As the bidder is legally obliged to carry out the public takeover bid, the takeover bid cannot contain any conditions precedent, and the price offered cannot be lower than a statutory minimum price (see 4.3).
- Squeeze-out bid - A person holding 95% of the voting securities of a company can force all of the other holders of voting securities (and securities conferring the right to voting securities) to tender their securities by means of a squeeze-out bid. A squeeze-out bid can either be made on a stand-alone basis by any person that already holds 95% of the voting securities, or as part of a (voluntary or mandatory) public takeover bid by a bidder who is able to acquire 95% of the outstanding voting securities via the public takeover bid (see 7.1).

In certain cases, the takeover is structured via a corporate merger between companies, whereby the merger is effected when it is approved by the general shareholders' meeting of both companies involved, and whereby either both companies are merged into a new company or one company is absorbed by the other company. The structure of a corporate merger offers some advantages as compared to a takeover bid, as it allows the companies to squeeze out all shareholders of the companies involved in the merger and to make them shareholders in the surviving entity. The corporate merger also has some disadvantages, as it requires the co-operation of the board of the target company and as the scope for a cash portion of the merger consideration is limited to 10%. As a result, the corporate merger is sometimes used if the merger consideration consists exclusively of new shares in the surviving entity, or after a takeover when the bidder has already obtained a significant shareholding in the target company and has the desire to squeeze-out all minority shareholders of the target company by making them shareholders of the bidder.

A scheme of arrangement structure does not exist under Belgian law.

4.2 Voluntary public takeover bid

The voluntary public takeover bid consists of a contractual offer on a voluntary basis for all the voting securities issued by the target company.

- The public takeover bid offer must apply to all voting securities of the target company, as well as all other securities issued by the target company conferring the right to acquire voting securities of the target company. A partial tender offer (seeking less than 100%) is not permitted, except in the case of a self-tender by a company to acquire its own shares.

- The bidder is, in principle, free to determine the price and (absent any pre-existing controlling interest in the target company) the form of consideration offered to the target shareholders. The offered price may be paid in cash, securities or a combination of cash and securities. There is no minimum price for a voluntary takeover bid, but the terms of the takeover bid, including the price, must be such that they could reasonably be expected to allow the takeover bid to succeed. If there are different categories of securities, (such as, for example, subscription rights for shares or convertible bonds issued by the target company) different prices per category can only be due to the characteristics of such categories.
- The bidder can make the takeover bid subject to merger control clearance and, subject to prior approval by the FSMA, certain other conditions precedent. Conditions precedent that are usually accepted by the FSMA are a minimum acceptance level, and the condition that there should not have been a material adverse change in the target company and/or the broader market.
- During the takeover bid period, the bidder cannot withdraw or amend the public takeover bid (unless to the benefit of the security holders of the target company). Subject to prior permission by the FSMA, a bidder can amend or withdraw the takeover bid in certain limited cases, such as the issuance of new voting securities by the target company in excess of 1% of the outstanding voting securities, or decisions or transactions by the target company that have or could have a significant change in the composition of the assets or liabilities of the target company, or obligations that were assumed without effective consideration. The takeover bid can also be withdrawn in the event of a higher bid or counter bid by a third party, when the conditions precedent of the takeover bid were not met, or subject to the permission of the FSMA in exceptional circumstances that prevent the takeover bid taking place for objective reasons outside the control of the bidder.
- Pending a takeover bid, any person can launch a counter bid or higher bid. The intention to launch a counter bid or higher bid must be announced at the latest two calendar days before the expiry of the acceptance period of the most recent bid, counter bid or higher bid. The price that is offered in a counter bid or higher bid must be at least 5% higher than the price offered in the most recent bid, counter bid or higher bid (as the case may be). In addition, the conditions of the counter or higher bid may not be more restrictive than the conditions of the most recent bid, counter bid or higher bid. The counter bid or higher bid may, however, be made subject to the condition precedent of merger control approvals.

4.3 Mandatory public takeover bid

In certain cases, a public takeover bid is legally required:

- if a person, as a result of an acquisition of voting securities (alone or in concert with others), owns more than 30% of the outstanding voting securities of a company, this person is obliged to make an offer for all of the remaining outstanding voting securities issued by the company (and securities issued by the company conferring the right to acquire voting securities of the target company); and
- a mandatory takeover bid can also be triggered if a person acquires a controlling participation in a holding company that holds more than 30% of the voting securities

of the target company, provided that the holding company's shareholding in the target company represents (based on its last publicly filed unconsolidated financial statements) more than half of the holding company's net assets or more than half of its average net results during the last three financial years.

It should be noted that the 30% threshold refers to the number of securities with voting rights, and not the number of voting rights. Accordingly, the double voting right for listed companies, which is permitted under the Belgian Companies and Associations Code, will not be taken into account for the purpose of the takeover rules set out in the Belgian Act of 1 April 2007 on public takeover bids.

The Belgian takeover rules provide for a number of circumstances in which there is no obligation to carry out a mandatory takeover bid even though a person has acquired more than 30% of the outstanding voting securities. These include situations where: (i) the stake of more than 30% is acquired as a result of a voluntary takeover bid; (ii) the stake is acquired from an affiliate; (iii) a third party exercises control over the target company or holds a larger shareholding in the company than the party that acquired more than 30%; (iv) the stake is acquired within the framework of a subscription to a capital increase with preferential subscription rights for the shareholders that has been decided upon by the general shareholders' meeting of the company, i.e., a rights offering; and (v) the stake is acquired within the framework of a corporate merger, provided that the person who, alone or acting in concert with others, acquired more than 30% of the voting rights in the acquiring or surviving company did not exercise the majority of the votes approving the merger at the general shareholders' meeting of the company to be merged.

As a mandatory takeover bid is required by law it cannot be made conditional, nor can it be withdrawn.

The price offered in a mandatory public takeover bid must be equal to at least the higher of: (i) the highest price paid by the bidder (or any person acting in concert with the bidder) during the period of 12 months preceding the announcement of the takeover bid; and (ii) the weighted average trading price for the securities of the target company on the most liquid market during the last 30 calendar days prior to the moment giving rise to the public takeover bid obligation. The FSMA has the power to allow or require an amendment to the price, including if it appears that, apart from the consideration offered, special, direct or indirect advantages are being granted to certain transferors of the securities.

The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered (in an amount corresponding to the cash value of the consideration securities at the time of the filing of the takeover bid with the FSMA) if: (i) the consideration does not consist of liquid securities that are admitted to trading on a regulated market in Belgium or elsewhere in the EEA; or (ii) during the term of 12 months prior to the announcement of the mandatory public takeover bid or during the takeover bid period, the bidder (or a person acting in concert) acquired securities in consideration of a payment in cash (or agreed to make such cash payment).

A mandatory public takeover bid must follow the same rules as a voluntary public takeover bid, except in terms of conditionality and price (as referred to above).

4.4 Certain funds requirement

If the consideration that is offered in the takeover bid consists of cash, the funds that are necessary to complete the takeover bid must be available, either on an account with an EEA-based credit institution, or in the form of an irrevocable and unconditional credit that has been granted to the bidder by an EEA-based credit institution. The funds must be blocked in order to guarantee the payment of the consideration for the securities that are acquired in the bid and can only be used for such purposes. The bidder must provide the proof of certain funds when it notifies the FSMA of its intention to launch a public takeover bid. The FSMA will not announce the public takeover bid unless it has been provided with proof of certain funds.

If the offered consideration includes securities, the bidder must have the power to issue (or have the ability to ensure that the issuer of the securities issues) the securities in sufficient number, amount and time.

4.5 Offer documents

A number of different documents are common and/or required in the context of a public takeover bid. Some notable documents and some of the applicable requirements imposed by Belgian takeover rules are set out in more detail below.

(a) Pre-transaction documents and contractual documentation

In the preparatory phase certain documents are often concluded with a view to organizing and structuring the transaction. Notable examples of such documents are confidentiality agreements, irrevocable undertakings, share purchase agreements and support undertakings by the target company. Confidentiality agreements are particularly important in situations where a target company intends to offer potential bidders the possibility of carrying out a due diligence review. Irrevocable undertakings are sometimes used within the context of a voluntary takeover bid to try to secure prior support from important shareholders of the target company. The effect and legal consequences and enforceability of such undertakings depend on their terms. Share purchase agreements can be used for stake-building purposes before or during a takeover bid. If the bidder crosses the 30% shareholding threshold via a share purchase agreement, this will trigger a mandatory takeover bid. In friendly takeover bids, the bidder and the target company often conclude a prior agreement regarding the terms and conditions of the takeover bid, the support that will be granted by the target board for the takeover bid, and certain other elements (see also 6.3).

(b) Prospectus

The bidder must prepare a prospectus in connection with the takeover bid. The prospectus must mention the terms and conditions of the takeover bid and must contain certain necessary information, taking into account the characteristics of the bidder, the target company, the securities to which the takeover bid applies and (as the case may be) the securities offered as consideration, in order to allow security holders of the target company to come to an informed opinion as to the transaction. The information must be presented in a form that is easy to analyze and understand. In addition, the Belgian public takeover bid rules contain a list of specific minimum information that is to be included in the prospectus. The prospectus must be approved by the FSMA before it can be published.

Any new significant fact, substantial error or incorrectness regarding the information included in the prospectus that could have an influence on the assessment of the bid and that arises or is discovered during the period as of the approval of the prospectus by the FSMA and the expiry of the acceptance period for the bid, must be mentioned in a supplement to the prospectus. The supplement must be approved by the FSMA and disseminated in the same manner as the prospectus.

The prospectus must be prepared in Dutch and in French. If the bidder can show that the target company usually publishes its financial information in only one of the Belgian official languages (Dutch, French or German) or in a language that is customary in the international financial sphere (such as English), the FSMA can accept a prospectus that is only prepared in the applicable official language or such other language. The summary of the prospectus must be prepared in Dutch and in French. If the advertising, announcements and other documentation regarding the takeover bid are disseminated in only one of the Belgian official languages, the summary may be disseminated in this language only.

(c) Response memorandum

The board of directors of the target company must prepare an opinion with respect to the takeover bid, called a "response memorandum" (*memorie van antwoord/mémoire en réponse*). In the response memorandum, the board of directors should address among other things, any comments it may have on the prospectus of the bidder and any transfer restrictions on the shares of the target company of which it is aware (as the case may be). The response memorandum should also contain the opinion of the board of directors with respect to the takeover bid, including the board's opinion on: (i) the consequences of the takeover bid, taking into account the whole of the interests of the target company, its security holders, its creditors and its employees (including the employment in general); (ii) the strategic plans of the bidder for the target company and the probable consequences of these plans with regard to the results, employment and operational sites of the target company; and (iii) whether the board of directors recommends securities holders to accept the takeover bid. The directors must individually indicate in the response memorandum whether they will tender any securities in the target company held by them. They should provide the same information for the shareholders that they represent in fact (as the case may be). If the directors or the shareholders that they represent in fact do not have the same opinion or intention, the different opinions and intentions should be mentioned.

The board must send its opinion on the takeover bid to representatives of the target company or, in the absence of such representatives, the employees of the target company. In practice, if there is a works council, the target's board will already involve the works council prior to the finalization of the response memorandum. If the board has received the position of the works council, this must be attached to the response memorandum.

The response memorandum must be approved by the FSMA before it can be published. The response memorandum is often included in the prospectus of the bidder, in particular in the event of a friendly tender offer, but it can also be disseminated separately.

Any new significant fact or substantial error or incorrectness regarding the information included in the response memorandum that could have an influence on the assessment of the bid and that arises or is discovered during the period between the approval of the response memorandum and the completion of the bid, must be mentioned in a supplement to the response memorandum. The supplement must be approved by the FSMA and disseminated in the same manner as the response memorandum.

In general, all information regarding the bid that is provided by a target company (or its intermediaries) and in whichever form, must always be compatible with the information in the response memorandum.

The response memorandum must be prepared in Dutch and in French. If the target company can show that it usually publishes its financial information in only one of the Belgian official languages (Dutch, French or German) or in a language that is customary in the international financial sphere (such as English), the FSMA can accept a prospectus that is only prepared in the applicable official language or such other language. The foregoing is subject to possible stricter language requirements imposed by the individual regions in Belgium.

(d) Fairness opinion

There is no general legal obligation for a bidder or a target company to obtain a fairness opinion for the purpose of the prospectus or the response memorandum, albeit that a fairness opinion is sometimes obtained on a voluntary basis to support the valuation of the target company. As an exception, in the event of a voluntary public takeover bid by a controlling shareholder of the target company (as the case may be), the bidder must obtain a fairness opinion from an independent financial expert, and the fairness opinion must be included in the prospectus. Likewise, a fairness opinion must be obtained in the context of a stand-alone squeeze-out bid by a shareholder holding 95% of the outstanding voting securities if such bid does not take place within the framework of a voluntary or a mandatory public takeover bid.

5. Timeline

The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under Belgian law. The takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid.

Date	Step
Ahead of a first approach (no fixed timeline)	Preparatory stage: • The bidder should appoint advisers that can assist it in the overall process. • The bidder should closely monitor the risk of potential leaks when it engages with external parties, and should obtain non-disclosure undertakings and put in place a leak strategy. • The bidder can carry out a (desk-top) due diligence review of publicly available information of the target company.
First approach (no fixed timeline)	First approach of the target company: • The initial approach by the bidder of the target company is likely to be an informal chairman-to-chairman discussion, or adviser-to-adviser discussion. • Depending on the structure of the shareholder base of the target company, there can be parallel discussions with (some) key shareholders. • During this stage the bidder should work on an indicative offer letter and presentation for the target board.
If the target company agrees to engage (no fixed timeline)	Due diligence, certain funds and negotiation of terms, leading up to the announcement of the takeover bid: • If the target company agrees to engage with the bidder, the bidder may negotiate the terms of its offer with the target company and its key shareholders (as relevant).

Date	Step
	• During this stage, the bidder can request access to non-public information regarding the target company to carry out a due diligence. • In parallel, the bidder should work on the contractual documentation with the target company and (as the case may be) the key shareholders, as well as the draft prospectus and the certain funds financing.
D – 1 business day	Notification of the FSMA by the bidder: • Before the bidder can launch the takeover bid, it must notify the FSMA. The bidder's notification must contain, among other things, a draft prospectus and proof of certain funds to pay the offer price. • The FSMA will review whether the takeover bid complies with the requirements of the Belgian takeover rules.
D	Public announcement of the takeover bid: • At the latest within one business day following the notification of the FSMA by the bidder, the FSMA will announce the takeover bid to the public and the target company. As of the moment the bid is made public, the bidder can no longer withdraw the bid (except in certain limited circumstances such as in the event of a counter bid or certain defensive actions by the target company), and the powers of the board of the target company are limited. • The FSMA will notify the target and provide the target's board with a draft of the prospectus that was filed by the bidder with the FSMA. • As soon as the takeover bid is announced, the board of the target company and the board of the bidder must each notify this to the representatives of their respective employees or, in the absence of such representatives, their respective employees.

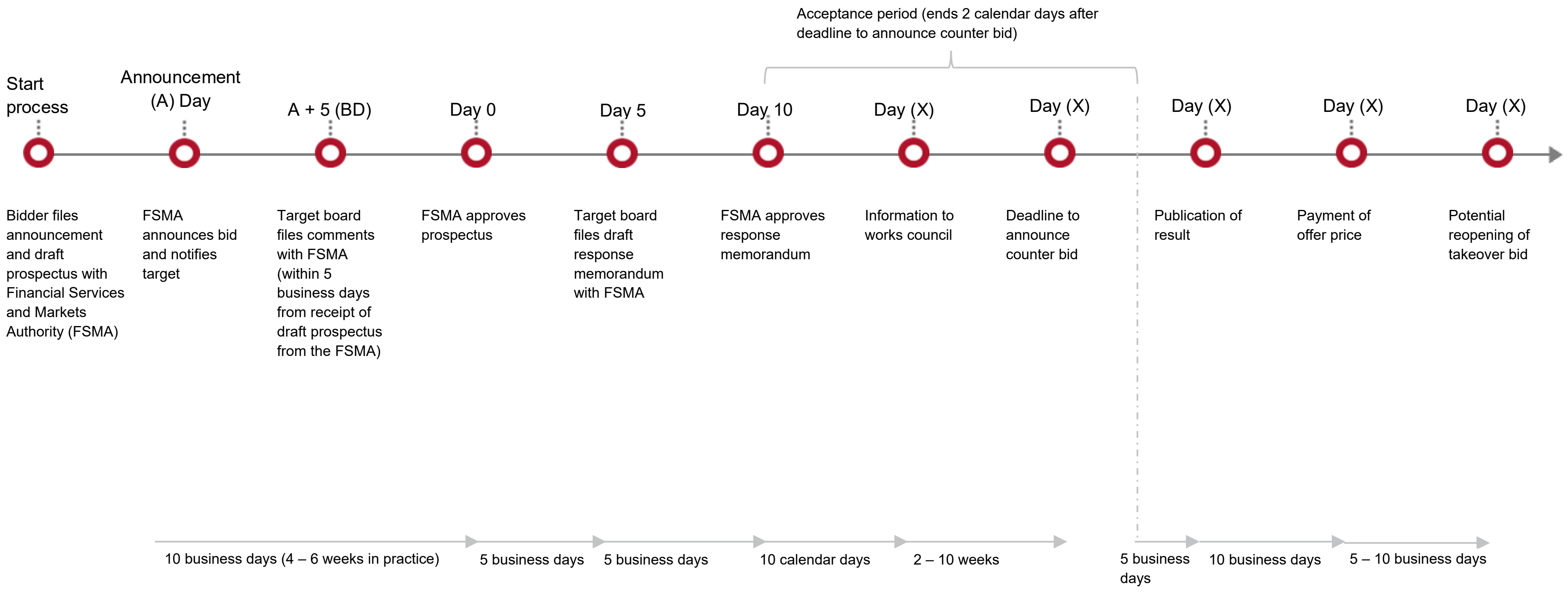
Date	Step
D + 4 to 6 weeks	Prospectus review: • The review and approval by the FSMA of the prospectus of the bidder can generally take between four to six weeks. This period can take longer if the transaction is subject to anti-trust approvals or attracts controversy from market participants. • Within five business days as of the receipt of the draft prospectus from the FSMA, the board of directors of the target company must inform the FSMA whether it is of the opinion that the draft prospectus contains omissions or that it contains information that could mislead security holders of the target company.
D + 4 to 6 weeks + 5 business days	Response memorandum by the target's board: • After the FSMA's approval of the prospectus, the FSMA provides a copy of the prospectus to the board of the target company. The board has a term of five business days as of the receipt of the prospectus to send its response memorandum to the FSMA. • The response memorandum must be reviewed and approved by the FSMA. • Usually, in the context of a friendly takeover bid, the review of the response memorandum runs in parallel with the review of the prospectus. In that event the response memorandum can, in practice, be approved by the FSMA at the same time as the prospectus. • If the target company has a works council, the target's board will usually involve the works council prior to the finalization of the response memorandum. If the board has timely received the position of the works council, this must be attached to the response memorandum.
Before A	Publication of the prospectus and response memorandum: • The prospectus and response memorandum can only be published after their approval by the FSMA. • As soon as the prospectus is published, the board of the target company and the board of the bidder must send the prospectus to the representatives of their respective employees or, in the absence of such representatives, their respective employees.
A	Start of acceptance period: • The acceptance period can start at the earliest five business days after the approval of the prospectus by the FSMA, or immediately after the approval of the response memorandum if this approval is earlier.

Date	Step
	• The acceptance period has a minimum term of two weeks and a maximum term of 10 weeks.
A + 10 business days	Hearing of the works council of the target company: • If the target company has a works council, the works council must organize a hearing with the representatives of the board of the bidder (unless the works council unanimously decides not to call for a hearing). The hearing must take place at the latest 10 days after the start of the acceptance period for the bid, and the date must be sent to the board of the bidder at least three days in advance. In practice, the hearing can be organized prior to the start of the acceptance period. • During the hearing, the representatives of the bidder must present the industrial and financial policy of the bidder and its strategic plans for the target company and the probable consequences of these plans for the results, employment and operational sites of the target company. The representatives of the bidder must take note of the potential comments of the works council. • As long as a bidder, after having been invited for the hearing, has not presented itself for such hearing, the bidder cannot exercise the voting rights attached to the securities acquired in the context of the takeover bid at the general shareholders' meeting of the target company.
End acceptance period – 2 days	Deadline for counter bids or higher bids: • Counter bids and higher bids must be announced (by the FSMA) at the latest two calendar days prior to the expiry of the acceptance period of the last bid.
P	Publication of results: • Within five business days after the end of the acceptance period, the bidder must publish the results and, when relevant, whether or not the bidder waives the conditions precedent to the bid.
P + 10	Settlement: • Within 10 business days after the publication of the result, the offered consideration must be paid by the bidder.
P + 10	Reopening of the takeover bid: • The acceptance period of the takeover bid will be reopened if, after the end of the acceptance period, the bidder (alone or together with its affiliates) holds more than 90% of the voting securities. The acceptance period must also be reopened if the bidder has obtained 95% and requests the delisting of the target company.

Date	Step
	• The new acceptance period has a minimum term of five business days and a maximum term of 15 business days.

Set out below is an overview of the main steps for a voluntary public takeover bid in Belgium.

Voluntary public takeover bid (indicative timeline)



Acceptance period (ends 2 calendar days after deadline to announce counter bid)

Start process

Bidder files announcement and draft prospectus with Financial Services and Markets Authority (FSMA)

Announcement (A) Day

FSMA announces bid and notifies target

A + 5 (BD)

Target board files comments with FSMA (within 5 business days from receipt of draft prospectus from the FSMA)

Day 0

FSMA approves prospectus

Day 5

Target board files draft response memorandum with FSMA

Day 10

FSMA approves response memorandum

Day (X)

Information to works council

Day (X)

Deadline to announce counter bid

Day (X)

Publication of result

Day (X)

Payment of offer price

Day (X)

Potential reopening of takeover bid

10 business days (4 – 6 weeks in practice)

5 business days

5 business days

10 calendar days

2 – 10 weeks

5 business days

10 business days

5 – 10 business days

- In practice, periods are longer as they start from when the FSMA considers the submitted documents to be complete.
- The overall timeline from announcement to closing can take between 8 to 12 weeks (subjects to counter/higher bids, and any merger control waiting periods).

6. Takeover Tactics

6.1 Stake building

One tactic a potential bidder may consider is to build up a stake in the target company. This would have a number of potential benefits, including indicating to the target's board the seriousness of the bidder's intentions, lowering the overall cost of acquiring the shares in the target and potentially deterring competing bidders. However, before deciding to acquire any interests in the securities of the target, the bidder should consider (amongst other things) the following issues and implications:

- The bidder should not acquire any interest in target securities at a time when to do so would constitute market abuse or insider dealing (see 6.2). This is likely to be the case if the bidder is in possession of non-public due diligence information which includes inside information and the bid has not yet been made. The bidder could also be subject to challenge by investors that may have sold shares of the target company at the time at which the public takeover bid has not yet been made public, but the bidder has decided for itself to start preparing for a public takeover bid.

- Any acquisition (even of one share) may be prohibited or may result in a requirement for a mandatory bid to be made for the target if that acquisition takes the shareholder's aggregate holding to 30% or more (see 4.3).

- Any dealing by the bidder (or anyone acting in concert with it) may be publicly disclosed prior to or as of the start of the offer period (see 3.5).

- An acquisition may impact on the nature and level of consideration that the bidder may then offer in a takeover bid. Notably, in the event of a mandatory takeover bid, if the bidder (or any person acting in concert with it) acquired any shares during the period of 12 months preceding the announcement of the takeover bid, the price offered in the mandatory takeover bid cannot be lower than the highest price paid by the bidder (or such person with whom the bidder acts in concert) for shares during such 12-month period. Furthermore, when the bidder in a mandatory takeover bid offers securities, it must also offer a cash alternative if during the term of 12 months prior to the announcement of the mandatory public takeover bid or during the takeover bid period the bidder (or a person acting in concert) acquired securities in consideration of a payment in cash (or agreed to make such cash payment).

6.2 Insider dealing and market abuse

All parties involved in a potential takeover bid must be aware of and comply with the rules and regulations on insider dealing and market abuse.

The rules relating to insider dealing are set out in the EU Market Abuse Regulation, and related EU and Belgian legislation. These rules make it a criminal offense for a person who has inside information to deal or to encourage others to deal on the basis of inside information or to disclose inside information.

In summary, inside information is:

- information of a precise nature;

- which has not been made public;

- relating to a particular company or particular securities;

- but which, if it were made public, would be likely to have a significant effect on the price of the securities.

Information will be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to occur and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments. "**Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments**" shall mean information a reasonable investor would be likely to use as part of the basis of their investment decisions.

The EU Market Abuse Regulation (and related rules) has a direct effect in Belgium, as in all EEA jurisdictions, and contains a civil prohibition on market abuse. The FSMA is empowered to decide that certain conduct constitutes market abuse. It can then impose fines and/or other penalties. Given that the rules relating to market abuse are based on the EU Market Abuse Regulation, the position on market abuse in Belgium will be similar to that in other EEA jurisdictions. In addition, Belgian national legislation contains criminal sanctions for insider dealing and market abuse.

In principle, a Belgian company has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public. It is up to the company to determine if certain information qualifies as "inside information". This will be, in many circumstances, a difficult exercise, and a large grey area will exist as to whether certain events will need to be disclosed or not.

6.3 Deal protection

The Belgian takeover bid rules do not provide for a prohibition or regulation of inducement fee agreements exclusivity/ "no-shop" agreements, or other arrangements aimed at increasing deal protection for bidders.

In the context of a friendly takeover bid, potential bidders often try to obtain support for the bid by the target company, including exclusivity undertakings and break fee arrangements. While there are no strict legal prohibitions to such undertakings, their value and enforceability can be limited, given that the board of a Belgian company has a general obligation to act in the corporate interest, which includes the interest of all of its shareholders, and to treat all of its shareholders in an equal manner. That being said, potential bidders can take some comfort from the fact that the powers of the board of a target company are restricted pending a takeover bid, which reduces the scope for frustrating actions (see 6.5).

As a general principle, all security holders of the same class must be offered equivalent treatment by a bidder in the context of a takeover bid. Special deals for certain shareholders are in principle not possible, but depending on specific circumstances different arrangements could be implemented for management, e.g., to incentivize management, or for certain shareholders of the target company reinvesting into the target company after the takeover.

6.4 Irrevocable undertakings

An irrevocable undertaking is an undertaking given by a shareholder of the target company to a bidder where they undertake to accept the bidder's bid for the target company when it is made. Irrevocable undertakings are used so that bidders do not need to purchase the shares directly, but at the same time have comfort that the shares (subject to the terms of the undertaking) will be tendered to the bidder in the takeover bid. The effect and enforceability of irrevocable undertakings depend to a large extent on their terms and drafting. This is because the Belgian takeover bid rules provide that the terms of a takeover bid must include that a security holder that accepted a bid in the context of a takeover bid can withdraw their acceptance at any time during the acceptance period. In line with practice in other jurisdictions, notably the United Kingdom, irrevocable undertakings can be "hard" (meaning that they remain binding even in case of a counter bid) or "soft" (meaning that, depending on the circumstances, the shareholder that provided the undertaking is released from its commitment). Depending on the terms of the undertaking, the shareholders concerned could be deemed to be acting in concert with the bidder.

6.5 Target board responsibilities and prohibition on frustrating actions

The powers of the target company (and in particular the powers of its board) are limited during the public takeover bid period. Notably:

- When the board of directors of a target company has been granted the power to increase the share capital through a contribution in kind or through contributions in cash with disapplication (cancellation or limitation) of the preferential subscription right of the existing shareholders, this power will be suspended during a takeover bid unless the general shareholders' meeting expressly approved that these powers can also be exercised in case of a public takeover bid.

- During the period as of the receipt by the target company of the notification by the FSMA of a public takeover bid for the securities of the target company and until the end of the takeover bid, only the general shareholders' meeting of the target company can decide upon or carry out transactions that could entail a significant change in the composition of the assets or liabilities of the target company, or assume obligations without effective consideration. The performance of operations or transactions that have started before the receipt by the target company of the aforementioned notification by the FSMA can continue, provided the performance has had sufficient progress.

- Existing obligations of the target company (for example, convertible rights and options to acquire assets) remain in place and must be performed. However, when contracts contain clauses that can be accelerated or triggered as a result of a change of control or public takeover bid, e.g., a termination right in a loan agreement in the event of a change of control, and such acceleration or trigger has a significant effect on the assets or liabilities of the company, or either a significant debt or obligation for the company, such clauses may not be effective unless they have previously been approved by the general shareholders' meeting of the target company and unless the decision of the general shareholders' meeting has been filed with the local company registrar.

This entails that potential defense strategies or mechanisms could be limited or restricted (see 6.6).

The Belgian takeover bid rules allow for additional restrictions on the powers of the board or shareholders of the target company, but these are rarely put in place.

6.6 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. "Loyal" shareholder voting rights Double voting rights for registered shares held by the same shareholder for a term of at least two years.	- Requires an express authorization in the articles of association of the target company.(1) - The double voting right applies to all shareholders that hold registered shares for at least two years. - The two-year term starts as from the date the shares are registered in the share register book even if the registration occurred before the double voting right was introduced in the articles of association, and even if the target company was not yet listed at the time. - A bidder who, following a public takeover bid, holds at least two-thirds of the securities with voting rights, can convene a shareholders' meeting to cancel the double voting rights, without any financial compensation being due to such shareholders.
2. Capital increase (poison pill) Capital increase by the board of the target company (authorized capital) without preferential subscription rights of the shareholders.	- Requires an express authorization in the articles of association.(2) The authorization is valid for three years only, but can be renewed. - The capital increase may not exceed 10% of the existing share capital or the amount remaining available under the authorized capital. - The issue price of the new shares may not be less than the price offered in the takeover bid. The shares are to be fully paid up upon issuance. As relevant, the applicable conflicts of interest rules must be applied within the board of directors.
3. Share buyback Share buyback by the target company.	- Requires an express authorization by the general shareholders' meeting.(2) - The authorization is valid for a maximum of five years or three years only (in case the buyback powers were granted with a view to avoid an imminent and serious harm to the company), but can be renewed. - The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves of the target company.
4. Sale of crown jewels An arrangement significantly affecting the assets of, or creating a liability for, the target company which is triggered	- Requires a prior approval by the general shareholders' meeting if the arrangement significantly affects the assets or liabilities of the

Mechanism	Assessment and considerations
by a change in control or the launch of a takeover bid.	target company or gives rise to a significant debt or obligation for the target company.(3)
5. Limitations on director dismissals Payment of termination fee or granting of a notice period upon dismissal of a director.	• The articles of association of the target company can provide that the mandate of a director can only be terminated subject to the payment of a termination fee or the granting of a prior notice period. This requires an express authorization by the general shareholders' meeting.(2) • The general shareholders' meeting can always terminate the mandate of a director, without termination fee or notice period, for legal reasons.(3) • As director mandates have a limited term (which can be renewed), the effect of such termination fee or notice period may be limited in time. It does not prevent the appointment of new directors in addition to the directors to be dismissed (unless the articles of association contain restrictions regarding the size of the board).
6. Subscription rights for new shares Subscription rights (warrants) are issued prior to the takeover bid in favor of "friendly person(s)" (without preferential subscription rights of the shareholders) who can exercise the subscription rights at their option and subscribe for new shares.	• Requires a prior approval by the general shareholders' meeting.(2) • The subscription rights have a maximum duration of five years. The identity of beneficiaries must be disclosed to the shareholders' meeting approving the issue of the subscription rights. • No authority is available under the authorized capital to issue subscription rights in favor of specified persons only (other than employees) without preferential subscription right of the shareholders.
7. Frustrating actions Actions by the target company such as significant acquisitions, disposals, changes in indebtedness, etc.	• From the moment the target receives a notice from the FSMA concerning the takeover bid until the bid closes, only the general meeting of shareholders may take decisions, or carry out transactions, that would significantly alter the composition of the company's assets or liabilities, or incur obligations without real consideration. These decisions or transactions may not be taken or carried out subject to the success or failure of the takeover bid. • Only transactions which have already sufficiently progressed prior to the receipt of the notification of

Mechanism	Assessment and considerations
	a takeover bid may be implemented by the target company's board.
8. Shareholders' agreements Shareholders of the target company undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• Voting agreements must be limited in time, and cannot be against the corporate interest. • Shareholders cannot commit to vote upon instruction of the board. • The shareholders could be considered as "acting in concert". In that event, the arrangement may need to be disclosed. If the parties acting in concert hold more than 30% of voting rights, any subsequent acquisition of shares within the next three years will trigger an obligation to launch a mandatory takeover bid. • Assumes a stable shareholder base or reference shareholders. • The articles of association can, however, contain a provision indicating that, at a general shareholders' meeting, convened during the bidding period and where protective measures are to be discussed, voting restrictions set out in the articles of association and shareholders' agreements will not apply, and that securities with multiple voting rights will only have one vote.
9. Limitation of voting rights Clause in the articles of association of the target company providing for a proportional restriction of voting rights (applying to all shareholders equally).	• Requires an express authorization in the articles of association.(2) • The limitation must apply to all shareholders equally. • The articles of association can, however, contain a provision indicating that, at a general shareholders' meeting, convened during the bidding period and where protective measures are to be discussed, voting restrictions set out in the articles of association and shareholders' agreements will not apply, and that securities with multiple voting rights will only have one vote.
10. Veto rights for certain shareholders Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms.	• Requires an express authorization in the articles of association.(2) • Requires reference shareholder(s).

Mechanism	Assessment and considerations
11. Limitations on share transfers Board approval or pre-emptive rights clauses in the articles of association or in agreements between shareholders.	- Requires an express authorization in the articles of association.(2) - Shareholder agreements can also provide for pre-emptive rights. - Non-transferability clauses must be justified by a legitimate interest, in particular as to their duration. Non-transferability clauses for an indefinite period can always be terminated subject to a reasonable prior notice. - Limitations consisting of a prior approval right or a pre-emptive right cannot result into a transfer restriction that is longer than 6 months as of the request for approval or the invitation to exercise the pre-emptive rights. - If the articles of association contain approval clauses or pre-emptive rights, the board of the target company must indicate in its response memorandum whether these clauses or rights apply vis-à-vis the bidder and, as the case may be, whether it will grant an approval or not, or whether the board will demand the application of the pre-emptive rights. - If the approval is not granted or if pre-emptive rights are exercised, the shares must be acquired by a person that is approved or with respect to which pre-emptive rights are not exercised within five days after closing of the takeover bid for a price at least equal to the bid price. - Prior approval clauses can only be invoked against a bidder provided that a refusal or approval is motivated on the basis of a permanent or non- discriminating application of approval rules that have been approved by the board and which are notified to the FSMA after the receipt by the target company of the announcement of the takeover bid. - Shareholders could be considered as "acting in concert". If so, see "Shareholders' agreements" above. - Exceptional for listed companies (listed securities are in principle freely transferable, impact on share liquidity).

Mechanism	Assessment and considerations
12. Certification of shares Transfer of shares to a (Dutch) foundation (*stichting administratiekantoor*) in exchange for certificates with economic rights only. The foundation exercises the voting rights.	• The terms of the foundation usually provide that it may not transfer the certified shares. • Lengthy and heavy process to put in place. Only efficient if reference shareholders or a block of shareholders participate.

Notes: (1) The matter requires a majority approval of two thirds of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% attendance quorum does not apply to the second meeting that is convened if the 50% attendance quorum was not reached at the first meeting).

(2) The matter requires a majority approval of 75% of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% attendance quorum does not apply to the second meeting that is convened if the 50% attendance quorum was not reached at the first meeting).

(3) The matter requires a simple majority (no attendance quorum and simple majority of the votes cast). Note that a decision to transfer three quarters or more of the assets of the company will in any event require a vote of the general shareholders' meeting.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

A person holding 95% of the voting securities of a company can force all of the other holders of voting securities (and securities conferring the right to voting securities) to tender their securities by means of a squeeze-out bid.

A squeeze-out bid can either be made on a stand-alone basis by any person that already holds 95% of the voting securities, or as part of a (voluntary or mandatory) public takeover bid by a bidder who is able to acquire 95% of the outstanding voting securities via the public takeover bid.

The squeeze-out that is conducted in the context of a public takeover bid is subject to the conditions that: (i) following the takeover bid (or its reopening) the bidder (alone or in concert with others) holds 95% of the share capital with voting rights and 95% of the voting securities; and (ii) the bidder acquired, via the acceptance of the takeover bid, securities representing at least 90% of the share capital with voting rights to which the takeover bid applied. The latter 90% condition does not apply in the event the bidder acquired the 95% following a mandatory public takeover bid. If the conditions for the squeeze-out are satisfied, the takeover bid will be reopened at the same price for at least 15 business days, commencing within three months following the expiry of the acceptance period of the bid. The securities that are not tendered to the bidder at the expiry of the reopened bid are deemed automatically acquired by the bidder.

The process for a stand-alone squeeze-out bid is similar to that of a public takeover bid, but requires that an independent expert issues a separate opinion on the fairness of the price offered. The offered consideration can only consist of cash.

7.2 Sell-out

In the circumstances that a bidder is permitted to carry out a summarized squeeze-out bid (see 7.1), the securities holders that did not accept the takeover bid have the right to demand that the bidder acquires their voting securities and other securities conferring the right to voting securities on the same terms as the takeover bid. This right can be exercised by means of a registered letter with confirmation of receipt to the bidder (or the intermediary appointed by the bidder for this purpose) within a period of three months following the expiry of the acceptance period of the bid.

7.3 Restrictions on acquiring securities after the takeover bid period

During a period of one year as of the end of the takeover bid period, the bidder and the persons acting in concert with the bidder cannot directly or indirectly acquire any securities to which the takeover bid applied on terms that are more favorable for the transferees than the terms and conditions that applied to the takeover bid, unless the price difference is paid to all security holders that tendered their securities to the bidder.

8. Delisting

The FSMA may oppose a delisting of a Belgian company that is listed on Euronext Brussels in the interest of protecting investors. The FSMA will traditionally not permit a delisting of a Belgian company unless a squeeze-out has been carried out.

As an exception to the rule that the FSMA will not allow a delisting without a squeeze-out, the Belgian Act of 21 November 2017 allows for a simplified delisting procedure for listed companies with a very limited free float, if certain conditions are met. Such conditions relate to the number of securities not yet held by the controlling shareholder(s) (and persons acting in concert with such person(s)), which should not represent more than 0.5% of the total number of voting securities of the company, or have a total value of more than more than EUR 1,000,000. The matter also requires a majority approval of 75% of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% attendance quorum does not apply to the second meeting that is convened if the 50% attendance quorum was not reached at the first meeting), after the board of directors submitted a special board report to this effect.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Koen Vanhaerents and Roel Meers in the Brussels office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Belgium.

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Brazil

1. Overview

In general, the share control of Brazilian listed companies is more commonly acquired through private transactions between the acquirer and the controlling shareholder(s). This is because the majority of Brazilian listed companies still have their voting shares held by a controlling shareholder and have a relatively small free float. However, the Brazilian market has seen cases of public companies without a defined controlling shareholder structure being the object of takeover bids. Takeover bids have great potential to increase over the coming years, given that more and more Brazilian listed companies are moving away from a defined controlling shareholder structure towards a more diluted shareholder base.

2. General Legal Framework

2.1 Main legal framework

The pillars of the legal framework governing the acquisition of share control of Brazilian listed companies through private transactions or by public takeover bids are:

- Law No. 6,404, of 15 December 1976 (as amended from time to time), which governs corporations in Brazil ("**Corporations Law**");
- Law No. 6,385, of 7 December 1976 (as amended from time to time), which provides the general structure of the Brazilian securities market ("**Securities Law**"); and
- Resolution No. 215, issued by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* - "**CVM**") on October 29, 2024, which provides for the specific rules governing takeover bids in the Brazilian market ("**CVM Resolution No. 85**").

2.2 Other rules and principles

While the legislation referred to in 2.1 above contains the main legal framework for the takeover transactions of Brazilian listed companies, there are a number of additional rules and principles that need to be taken into account when preparing or conducting a public M&A transaction, such as:

- the rules relating to the disclosure of extraordinary events related to Brazilian listed companies (disclosure of material fact notices) and significant shareholdings in listed companies. These rules are derived from Resolution No. 44, issued by the CVM on August 23, 2021, as amended ("**CVM Resolution No. 44**"). For further information, see 3.4 below;
- the rules relating to insider dealing and market manipulation, which are derived from the Securities Law and CVM Resolution No. 44 and CVM Resolution No. 62 of January 19, 2022 ("**CVM Resolution No. 62**"). For further information, see 6.3 below;
- the general rules on the supervision and control over the securities markets;
- the regulations issued by the São Paulo Stock Exchange (B3 S.A. Brasil, Bolsa, Balcão - "**B3**") concerning the listing and delisting of securities from its trading segments; and
- the rules and regulations regarding merger control. These rules and regulations are not discussed herein.

2.3 Supervision and enforcement by the CVM

Transactions for the acquisition of the share control of Brazilian listed companies are subject to the rules and supervision of the CVM. The CVM is the federal regulatory agency responsible for directly regulating and supervising the Brazilian securities market. It is associated with the Ministry of Finance (*Ministério da Fazenda*) and it was created by the Securities Law.

On an administrative level, the CVM has powers to investigate and apply penalties for any irregularity or breach of law or regulations that might occur in the securities market. The penalties that the CVM is entitled to apply include monetary fines, suspension and cancellation of registrations and authorizations granted to participants in the Brazilian capital market, and temporary or permanent prohibitions from operating in the Brazilian capital market. In addition, criminal penalties and the obligation to indemnify for losses and damages may be imposed by the courts in case of non-compliance.

In certain cases, the CVM also has the power to grant exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 General principles

In general, the share control of Brazilian listed companies is most commonly acquired through private transactions between the acquirer and the controlling shareholder. This is because the majority of Brazilian listed companies still do not have a dispersed ownership or a high free float of voting shares, even though this scenario is changing slowly over time.

The direct or indirect transfer of the share control of a Brazilian listed company through a private transaction is conditioned upon a tender offer by the acquirer for the remaining free float voting shares for a price equal to at least 80% of the price paid for each voting share that is part of the share control, added by the Selic Rate (base interest rate defined by the monetary council of the Brazilian Central Bank) from the date of the payment to the seller until the financial settlement of the tender offer. Depending on the segment of the stock exchange on which the company is listed, and on the provisions of the bylaws of the company, the tender offer may also have to be addressed to the non-voting free float shares. The price to be offered to the free float may also reach 100% of the price paid for each voting share that is part of the share control.

Although not as common as private transactions, M&A transactions involving listed targets may also be structured through public takeover bids, regulated by the Corporations Law and CVM Resolution No. 215. The public takeover bid is subject to registration with the CVM, and will be automatically approved unless any portion of the offer price is expected to be paid with securities owned or to be issued by the bidder (a swap offer). In this case, the prior authorization of the CVM is required as the swap offer is always subject to the ordinary registry procedure before the CVM. The following general principles apply to takeovers bids in Brazil:

- all holders of the securities of an offeree company of the same class or type must be afforded equivalent treatment;
- the bid must remain open for acceptance by the shareholders for a period of between 20 and 45 days following disclosure to the market of the bid notice to allow shareholders sufficient time to make an informed decision in relation to the bid;
- in takeover offers for the acquisition of share control, the board of directors may opine on the contents of the offer and, if it so decides, its opinion must address all relevant aspects to support the decision of the shareholders, including the offer price and changes in the financial situation of the target company since the date of the last disclosure of its annual or quarterly financial statements. The opinion of the board of directors is mandatory in relation to any public offer for the acquisition of shares (be it

for the acquisition of the share control or another type of public offer) if the target company is listed on *Novo Mercado* or *Nível 2* trading segments of B3; and

- false markets must not be created in the securities of the target company, of the offeror company or of any other company concerned by the bid such that movements in the market price of the securities become artificial and the normal functioning of the markets is distorted.

2.5 Foreign investments regulation

Foreign investments are generally not restricted in Brazil and, except for customary anti-trust approvals, are only subject to reporting upon completion (as opposed to prior authorization). However for specific industries and regulated sectors such as banking, insurance, energy - public utilities, port and telecommunications — mainly those related to the rendering of public services — takeovers are subject to prior governmental or regulatory approvals.

In addition, the purchase (whether the purchaser is a Brazilian or a foreign investor) of a direct or indirect controlling interest in a Brazilian state controlled company will be, as a rule of thumb, subject to a previous public tender procedure to be conducted by the governmental entity that controls such company. The direct sale would only be allowed in cases where the controlling governmental entity is able to demonstrate that a public tender is unfeasible (usually, due to a lack of potential competition).

2.6 Proposed reforms

The Resolutions that apply to public M&A transactions result from recent compilations of previous rules adopted by the CVM. CVM Resolution No. 44 brought important updates to insider dealing rules to reflect CVM established precedents and CVM Resolution No. 215 reduced some unnecessary burdens. To date, there are no proposed or upcoming reforms to the Brazilian regulations applicable to takeover transactions.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Brazilian listed company:

	Shareholders	Rights
1.	With 0.5% of the capital stock	To obtain the addresses of shareholders for the purpose of granting powers of attorney for their representation in meetings by another shareholder.
2.	With 5% or more of the capital stock	To obtain the judicial exhibition of the company's books whenever acts violating the law or the bylaws are inferred, or if there is a well-founded suspicion of serious illegality performed by the company's management. To call for a shareholders' general meeting when management fails to do so within eight days after a justified request (which must include the agenda) is made by the shareholders. To request the directors and officers to disclose: (i) the number of securities they acquired or disposed, directly or indirectly, in the previous fiscal year, issued by the listed

	Shareholders	Rights
		company, its controlled companies or other companies of the same group; (ii) the stock options they have contracted or exercised in the previous fiscal year; (iii) the benefits, whether indirect or supplemental, they received or are receiving from the listed company, its controlled companies and other companies of the same group; (iv) the conditions of the employment agreements executed by the listed company with its officers and high level employees; and (v) any information material to the activities of the listed company. CVM Resolution No. 70 states that this percentage may vary for listed companies based on their corporate capital. To file a lawsuit against management for damages caused to the company, unless the general shareholders' meeting decides otherwise. To obtain information on subject matters within the competence of the audit board. To file a lawsuit against the controlling shareholder to recover damages resulting from an abuse of power of control. CVM Resolution No. 70 states that the 5% threshold required to exercise the rights above may vary for listed companies based on their corporate capital. To file a lawsuit for the winding-up of the company attesting that it cannot accomplish its purposes anymore.
3.	With 5% of the voting capital	To call a shareholders' general meeting for the establishment of an audit board if management fails to convene the same within eight days after a request by the shareholders.
4.	With 5% of the non-voting capital	To call a shareholders' general meeting for the establishment of the audit board if management fails to convene the same within eight days after a request by the shareholders. To request, during any shareholders' general meeting, the establishment of the audit board. CVM Resolution No. 70 states that this percentage may vary for listed companies based on their corporate capital.
5.	With at least 10% of the free float	In the case of listed companies, to request, within 15 days from the date the price of the delisting public offer (or public offer for the increase of controlling shareholder's equity participation above a certain threshold) is disclosed, that the administrators of the company call a special meeting of the holders of free-floating shares to deliberate on the

	Shareholders	Rights
		performance of a new evaluation of the price to be offered, based on the same or different criteria. Holders of 10% of the free-floating shares may call such a special meeting if the administrators fail to do so within eight days of receiving a request to call such meeting. The shareholders requesting/approving the new evaluation shall reimburse the company for the costs incurred therewith if the value ascertained is not greater than the initial price offered.
6.	With 10% of the voting capital	To request the adoption of the cumulative vote (*voto múltiplo*) proceeding in the election of the members of the board of directors, provided that it is made no later than 48 hours before the shareholders' general meeting. CVM Resolution No. 70 states that this percentage may vary for listed companies based on their corporate capital. To request, during any shareholders' general meeting, the establishment of the audit board. CVM Resolution No. 70 sets forth that this percentage shall vary for listed companies, according to their corporate capital. To elect a member and a respective alternate of the audit board in a separate election. Holders of preferred shares without voting rights or with restricted voting rights, acting jointly, shall be entitled to the same right. The controlling shareholders shall have the right to elect the same number of members elected by both holders of at least 10% of the voting shares and preferred shares, plus one member.
7.	With non-voting shares representing at least 10% of the corporate capital with at least 15% of the voting shares	Holders of the majority of the preferred shares without the right to vote or with restrictions on the exercise of such a right representing at least 10% of the corporate capital of listed companies shall be entitled to elect and replace a member of the board of directors and respective alternate in a separate election (holders of the majority of the voting shares of listed companies representing at least 15% of the total voting shares shall be entitled to the same right. If the aforesaid percentages are not achieved, holders of voting shares and of preferred shares without the right to vote or with restrictions on the exercise of such right representing, jointly, at least 10% of the corporate capital shall be entitled to the abovementioned right). Only shareholders holding the relevant percentages of shares for an uninterrupted period of at least three months prior to the date of the shareholders' meeting at which the directors will be elected will be entitled to the abovementioned right.

	Shareholders	Rights
8.	With 25% of the voting capital	To install the general shareholders' meeting on first call, except if otherwise provided by the Corporations Law (i.e., in case of amendment to the bylaws, the quorum to install the meeting shall be of shareholders representing at least two-thirds of the voting shares).
9.	Shareholder or group of shareholders part of a shareholders' agreement with more than 50% of the votes of the voting shares	A shareholder (or group of shareholders) of a listed company that is bound to the provisions of a shareholders' agreement and who holds more than 50% of the votes conferred by the voting shares shall have the right to elect the same number of directors elected by the other shareholders, plus one member, regardless of the number of members that make up the board of directors, provided that: (i) the election of the board members is performed through the cumulative vote (*voto múltiplo*) proceeding, and (ii) holders of preferred or common shares exercise their right to elect one of the directors.
10.	Any common shareholder	If the company is listed, the right to sell shares in a public offer for the transfer of the share control for a price at least equal to 80% of the price paid for each voting share that is part of the share control.
11.	Any preferred shareholder whose type of preferred shares have been adversely affected	Any preferred shareholder whose type of preferred shares has been adversely affected and who dissents from the decisions on any of the following matters shall have the right to withdraw from the company through the reimbursement of the value of his/her shares: (i) to create preferred shares or increase an existing class of preferred shares disproportionately in relation to other classes, except to the extent already provided for or authorized in the bylaws; or (ii) to modify a preference, privilege or condition of redemption or amortization of one or more classes of preferred shares, or to create a new class with greater privileges. The creation of preferred shares or increase of an existing class not in proportion to the other classes of preferred shares, if not authorized in the bylaws, shall be approved by the holders of at least half of such class of preferred shares at a special shareholders' meeting called for such specific purpose. The CVM may authorize the reduction of such quorum for listed companies, provided that their shares are diluted (*dispersas*) in the market and that less than half of the holders of the voting shares attended the last three shareholders' meetings.

	Shareholders	Rights
12.	Any shareholder	Any shareholder dissenting from the decisions on any of the following matters shall have the right to withdraw from the company through the reimbursement of the value of his/her shares: (i) to reduce the mandatory dividend; (ii) to amalgamate the company or cause its merger into another company; (iii) to participate in a group of companies; (iv) to change the corporate purposes; or (v) to split off the company, provided that it results in: (a) a change of the corporate purpose, except if the split net worth value is transferred to a company whose main activity is the same as the one set forth in the corporate purpose clause of the company being split; (b) a reduction of the mandatory dividend, or (c) the participation in a group of companies. In the case of listed companies and of decisions to: (i) amalgamate the company or cause its merger into another company; or (ii) participate in a group of companies, the holders of classes or types of shares that have liquidity and are diluted (*dispersas*) in the market are not entitled to withdraw from the company.
13.	Any shareholder	To file a lawsuit: (i) to annul the incorporation of the company due to any irregularity or defect; (ii) to annul a resolution made at a general or special shareholders' meeting irregularly called or held in violation of the law or bylaws, or flawed by error, bad faith, fraud or misrepresentation; (iii) to request indemnification for the losses incurred due to the appraisal of property from any appraisal expert or subscriber of capital; (iv) to collect dividends; (v) to bring a claim to receive indemnification for a negligent or fraudulent act committed by founders,

	Shareholders	Rights
		shareholders, administrators, liquidators, members of the audit board or controlling company in violation of the law, bylaws or the group's agreement; (vi) to bring a claim against a shareholder for the refund of a dividend received in bad faith; (vii) to bring a claim against the administrators for the refund of profits received in bad faith; and (viii) in the case of listed companies, to request indemnification from the offering party, the financial institution and the CVM for the damages incurred if such parties do not comply with their duty of confidentiality in connection with any tender offer for the acquisition of share control.
14.	Holders of preferred shares	The holders of preferred shares without voting rights or with restricted voting rights, acting jointly, shall be entitled to elect one member of the audit board and respective alternate in a separate election. Holders of preferred shares have the right to vote if the company does not pay the minimum or fixed dividend to which they are entitled for the period provided in the bylaws (not exceeding 3 years).

3.2 Restrictions and careful planning

Brazilian securities laws and regulations contain a number of rules that already apply before a takeover transaction is announced. These rules impose restrictions and hurdles in relation to prior stake building by a potential acquirer and announcements of a potential takeover transaction by a potential acquirer or a target company. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential acquirer intends to start a process that is to lead to the takeover of a Brazilian listed company.

3.3 Insider dealing and market abuse

Before, during and after a takeover transaction, the normal rules regarding insider dealing and market abuse remain applicable. The rules include, among other things, restrictions on the trade based on material non-public information, manipulation of the target's stock price (e.g., by creating misleading rumors) or creating false demand over the volume of trading of the target's stock price. For further information on the rules on insider dealing and market abuse, see 6.3 below.

3.4 Disclosure of shareholdings

Pursuant to CVM Resolution No. 44, the direct or indirect controlling shareholders, the shareholders who elect members to the board of directors or audit board, and any individual or legal entity, or group of individuals or legal entities acting in concert or representing the same interest, which carry out significant trades with securities are required to inform the Brazilian listed company. Significant trades are defined as the transaction or series of transactions whereby any of those mentioned above changes its direct or indirect holdings by 5%, 10%, 15% and so forth of any class or type of shares of the capital stock of the Brazilian listed company, including through other types of securities, financial instruments referenced to shares and rights over any of the foregoing.

Such disclosure obligation applies regardless of whether the derivatives are cash-settled or settled by physical delivery of the underlying asset. The difference will be in the form of calculation of the 5% threshold:

(a) shares directly held and those referenced in derivatives with physical delivery of the underlying asset (e.g., the shares of the Brazilian issuers) should be bundled together for the purposes of determining the disclosure threshold under CVM Resolution No. 44;

(b) derivatives referenced to shares which are exclusively cash-settled should be computed separately from the shares mentioned in item (a) above for the purposes of determining the disclosure threshold under CVM Resolution No. 44; and

(c) the number of shares referenced in derivative instruments that have economic exposure to the shares cannot be offset with the number of shares referenced in derivative instruments with opposite economic exposure.

The disclosure obligation does not apply to certain specific securities, such as securities index investment funds and other derivative instruments in which the shares of the listed company represent less than 20%.

The investor relations officer of the Brazilian listed company will be responsible for informing the CVM, the stock exchanges and organized over-the-counter markets where the company is listed. If the investor's intention is to change the share control or the administrative structure of the Brazilian listed company, or in the cases where the acquisition will result in an obligation to launch a tender offer, the investor will also be required to disclose a material fact notice with the details of the transaction.

The communication to be provided by the investor must include at least the following information: (a) its particulars, e.g., name, address, Brazilian resident attorney in fact in case of non-Brazilian resident investors, etc.; (b) the purpose of the participation acquired and the number of shares the investor intends to acquire, with a statement as to whether it intends to change the share control or the administrative structure of the Brazilian listed company; (c) the number of shares and other securities and derivative financial instruments referred in such shares, even if only subject to financial liquidation; and (d) whether the investor or any party related to the investor is a party to any agreement governing the right to vote and/or the purchase or sale of securities issued by the Brazilian listed company.

The members of the board of directors, board of officers, audit board, and any other board which may be set forth in the company's bylaws, must inform the company of transactions carried out by them with securities and derivative instruments referenced to shares issued by the company (and by its controlled or controlling companies, if they are also listed). The investor relations officer will then be responsible for transmitting the information to the CVM, the stock exchanges and organized over-the-counter markets where the company is listed.

In addition to the above, and specifically during the period of the tender offer for the acquisition of the share control of a Brazilian listed company, the offeror, the target company, its administrators (and those related to any of those previously mentioned), any third party registering a competing tender offer to acquire shares, as well as any holder (or group of holders acting together) of shares or derivative instruments referenced to shares representing at least 5% of a class and type of shares of the target company are subject to the disclosure requirements outlined in 6.3 below.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency throughout a takeover process. These rules require a company to immediately announce all relevant inside information that may influence (a) the trade price of the securities issued by the target company or the securities referenced thereto; (b) the investors' decision to purchase, sell or keep the securities issued by the company or the securities referenced thereto; or (c) the investors' decision to exercise any rights arising from their position as holders of securities issued by the company or of securities referenced thereto. For further information on inside information, see 6.1 below.

The facts surrounding the preparation and negotiation of a public M&A transaction may constitute inside information. As such, the target company would ordinarily be required to announce this to the general public. However, the management of the target company can delay the announcement if it believes that disclosure would not be in the legitimate interest of the company. This could be the case if the target's management believes that early disclosure would prejudice the negotiations of the transaction.

A delay of the announcement is only permitted provided that the non-disclosure does not entail a risk that the public will be misled, and that the company can keep the relevant information confidential. To the extent there is any leak of information concerning the possibility of a public M&A transaction involving a Brazilian listed company, the CVM may require the issuance of a formal notice to the market confirming or denying such transaction. For further information on early disclosures, see 3.7 below.

3.6 Announcements of a public M&A transaction

According to CVM Resolution No. 44, the transfer of the share control of a Brazilian listed company through a private transaction must be reported to the CVM and the stock exchanges where the company's securities are traded and disclosed to the market by both the company and the acquirer. The acquirer of share control is required to disclose to the market, among other things, information on the price paid (total and per share), the form of payment, the number and percentage of shares acquired, the purpose of the acquisition of the share control, the existence of any shareholders' agreement governing the exercise of the voting right or the sale and purchase of securities. The acquirer will also be required to notify the market if it intends to delist the company within 1 year following the acquisition of control, and other important information related to the business and any corporate reorganization.

If the transaction is expected to be conducted through a public takeover bid, there are no prior announcement requirements. Given that this specific type of tender offer is voluntary, the candidate bidder is able to announce the takeover tender offer directly upon the filing of the tender offer notice for registration with the CVM, which will be automatically approved unless the offer involves the swap of securities.

If there are rumors or leaks that a potential acquirer intends to acquire the share control of a Brazilian listed company either through a private transaction or by way of a takeover bid, the CVM could force an announcement. For further information, see 3.7.

3.7 Early disclosures – Put-up or shut-up

(a) **Early disclosure demanded by the CVM** – Whenever required for the good functioning of the markets, the CVM has the right to require a person that could be involved in a possible public M&A transaction to make an announcement confirming or denying the intentions to pursue the transaction. This type of disclosure is often made when there are leaks or rumors regarding a potential transaction involving a Brazilian listed company.

(b) **Put-up or shut-up** – In addition to the foregoing rule, the CVM has a specific mechanism to require a person to make an announcement as to whether or not it intends to carry out a public takeover bid. The relevant rules can be summarized as follows:

- If there are leaks or rumors concerning a potential takeover bid, the potential acquirer is expected to either disclose the tender offer notice or inform the market of whether or not it is considering launching the takeover bid. If the potential acquirer fails to do so, the CVM may demand such disclosure subject to the application of penalties imposed by Brazilian securities regulations.
- If the potential acquirer issues a notice to the market indicating that it is still considering whether or not to launch a takeover bid, the CVM may impose a window of time for the potential acquirer to either (a) file the tender offer for registration with the CVM and disclose the tender offer notice, or (b) issue a new announcement to the market indicating that it does not intend to launch a takeover bid during the period of six months following the publication of such announcement.

3.8 Due diligence

The Brazilian public M&A laws and regulations do not contain specific rules as to whether prior due diligence can be organized nor how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a potential acquirer is generally accepted both by market practice and by the CVM, and appropriate mechanisms have been developed to organize a due diligence or pre-acquisition review in order to address potential market abuse issues and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

In addition, and more specifically in relation to public takeover bids, the potential bidder may not have sufficient information on the target company to populate the tender offer notice as required under CVM Resolution No. 215. As a result, the CVM requires, the target company to disclose the following information publicly to the CVM and the market after the disclosure of the tender offer notice by the potential acquirer:

(a) the number, class and type of securities issued by the target company and owned (or taken or given in loan) (i) by the target company itself, (ii) by the members of management, (iii) by individuals/entities related to the target company, and (iv) by individuals/entities related to the management of the target company;

(b) a detailed description of the exposure of (i) the target company, (ii) the members of management, (iii) the individuals/entities related to the target company, and (iv) the individuals/entities related to the management of the target company to derivatives referenced to securities of the target company;

(c) a report on transactions with securities or derivatives referencing securities of the target company by (i) the target company itself, (ii) the members of management, (iii) individuals/entities related to the target company, and (iv) individuals/entities related to the management of the target company for the period between three months before the disclosure of the tender offer notice until the disclosure of this information to the market;

(d) a detailed description of any agreements, options, letters of intent or other legal documents related to the acquisition or sale of securities issued by the target company involving (i) the target company itself, (ii) the members of management, (iii) the individuals/entities related to the target company, and (iv) the individuals/entities related to the management of the target company;

(e) a description and analysis of possible economic consequences of the tender offer for the members of the management of the target company, including, among others, extraordinary payments and acceleration of stock option rights; and

(f) securities, derivatives referencing securities, securities given or taken in loan, issued by the potential acquirer and owned by (i) the target company itself, (ii) the members of management, (iii) individuals/entities related to the target company, and (iv) individuals/entities related to the management of the target company.

3.9 Acting in concert

For the purposes of the Brazilian public takeover bid rules, persons "acting in concert" shall be those acting together to represent the same interest as another person.

Pursuant to the CVM Resolution No. 215, the following situations will be construed as "acting in concert" or "representing the same interest", in relation to a person, entity or fund: (a) its spouse, ascendant, descendant or relative by blood up to the second degree, (b) its direct or indirect controller, anyone controlled by it or anyone under common control with it, (c) anyone that has acquired (even if under a suspensive condition), its control or the control of the target company, has promised to acquire or holds a call option in relation to the control of the target company, or any intermediary in the transfer of the control of the target company, (d) the manager of investment fund, in relation to those investment funds in which it exercises the discretionary management of the investments, and (f) the administrator of the estate, judicial manager or equivalents, in relation to the "universality of rights".

4. Effecting a Takeover

The following are the main types of takeover bids:

- takeover offer due to the increase in the controlling shareholder's interest. This is a mandatory offer that the controlling shareholder of a Brazilian listed company is required to launch if it has made an acquisition of free float shares of a given type and class which reduces the free float shares of that same type and class to less than 15% (or if, before the acquisition of the free float shares of a type and class, the free float shares of that same type and class was already less than 15%);

- takeover offer due to the transfer of share control. This is a mandatory offer that the acquirer of the control of a Brazilian listed company is required to launch. The acquirer is required to offer to the remaining holders of free float voting shares (and non-voting shares, if the company is listed on *Level 2* or *Bovespa Mais Level 2* segments of B3) the right to sell their shares for a price equivalent to at least 80% (or 100%, depending on the segment of B3 on which the company is listed or the provisions of its bylaws) of the price paid by the acquirer to the former controlling shareholder in the acquisition of the share control through a private transaction, added by the Selic Rate from the date of the payment to the seller until the financial settlement of the tender offer; and

- takeover offer for the acquisition of the share control of a Brazilian listed company. This is a voluntary offer launched by a potential acquirer aiming to acquire free float shares in the market in a sufficient number to acquire share control.

At least 10 days prior to the date of the auction of a takeover offer, any third party may file a competing offer for a price at least 5% higher than the price of the original offer. The original offeror and the competing offeror may increase their respective price offers, following the rules imposed by the CVM (e.g., in case of an offer for the acquisition of share control, the price cannot be increased at the auction).

Except in the case of a takeover offer for the acquisition of share control, a third party may interfere in the bid auction with the purpose of purchasing the shares which are the subject of the bid, provided that it notifies the CVM at least 10 days prior to the date of the auction and that it offers a price at least 5% higher than the price previously offered by the original offeror. The third party interfering in the offer may offer to buy less shares than those subject to the offer, except in the case of an offer made due to the increase in the controlling shareholder's interest or of an offer for the de-listing of the company.

4.1 Takeover offer due to the increase in the controlling shareholder's interest

Pursuant to CVM Resolution No. 215, the controlling shareholder of a Brazilian listed company is required to launch a takeover offer whenever it, a person related to it, or other persons that act jointly with the controlling shareholder make(s) an acquisition of free float shares of a given type and class which reduces the free float shares of that same type and class to less than 15% (or if, before the acquisition of the free float shares of a type and class, the free float shares of that same type and class was already less than 15%). This is a mandatory offer and requires the prior approval of the CVM to be launched.

The offer price per share must be fair and duly supported by an appraisal report prepared in accordance with CVM Resolution No. 215. The appraisal report can be discharged in certain specific cases set forth in CVM Resolution No. 215. Unless the appraisal report is discharged as mentioned above, the price must be at least equal to the appraisal value of the target company, added by the Selic Rate from the base date used by the appraisal report until the financial settlement of the offer, based on the following criteria: (a) weighted average trade price of the securities in the stock exchange, (b) book value, (c) discounted cash flow, (d) multiples comparison, and/or (e) other criteria accepted by the CVM.

Holders of at least 10% of the free float shares have the right to request the managers of the target company to call a special meeting of holders of the free float shares to decide on the revision of the offer price and preparation of an appraisal report by an appraising firm of their choice that meets the requirements of the CVM, if they understand that the price offered is not a fair one. This right applies regardless of whether or not the appraisal report was originally discharged, as mentioned above.

As an alternative to launching the tender offer due to an increase in the controlling shareholder's interest, the controlling shareholder, those related to the controlling shareholder or other persons that act jointly with the controlling shareholder may (a) inform the CVM that they will sell in an organized securities market the shares in excess of the threshold amount within three months from the date of their acquisition, or (b) request from the CVM an authorization not to make a public offer due to an increase in the ownership of shares, provided that the controlling shareholder or those mentioned above agree to sell outside an organized securities market the shares in excess of the threshold amount within three months from their acquisition. If the shares are not sold within the deadlines set out above, the controlling shareholder must file with the CVM, within 30 days, a request for the registration of an offer due to the increase in the controlling shareholder's interest. This alternative proceeding may be used only once every two years.

4.2 Takeover offer due to the transfer of share control

As a general rule, the direct or indirect transfer of the share control of a Brazilian listed company through private transactions is conditional upon the acquirer launching a takeover offer for the acquisition of the remaining voting shares of the free float issued by the company, for a price equal to at least 80% of the price paid for each voting share that is part of the share control, added by the Selic Rate from the date of the payment to the seller until the financial settlement of the tender offer. Depending on the segment of B3 on which the company is listed, and on the provisions of the bylaws of the company, the public offer may also have to be made to holders of the non-voting shares and the price to be offered to the free float may reach 100% of the price paid for each voting share that is part of the share control.

The acquirer of share control may offer the minority shareholders the option to remain as shareholders upon the payment to them, by the acquirer, of the difference between the weighted average stock price of the shares subject of the offer in the last 60 trading floors prior to the beginning of the tender offer and the amount paid for each voting share forming part of the share control.

No appraisal report of the target company will be required except that, in case of an indirect transfer of the share control, (i) the offeror must submit to the CVM, along with the request for the registration of the public offer, a duly justified calculation of the price due in such public offer, prepared based on the price paid for the acquisition of the share control of the company, and (ii) the CVM may request the preparation and submission of such appraisal report.

Note that stricter requirements are imposed if there is a transfer of share control of companies listed within certain special trading segments of B3, i.e., *Nível 2, Novo Mercado, BOVESPA Mais* or *Bovespa Mais Nível 2*, in accordance with the listing regulations applicable to each respective trading segment.

4.3 Takeover offer for the acquisition of the share control

In general, the acquisition of the share control of a Brazilian listed company is made through private transactions. This is because most Brazilian listed companies do not have a dispersed ownership or a high free float of voting shares. The Corporations Law allows the acquisition of the share control of a listed company through a public takeover offer. This is a voluntary proceeding and it is subject to registration with the CVM, which will be automatically granted upon filing of the tender offer material, unless it involves the exchange of securities.

With the launch of this type of takeover offer, the board of directors of the target company will be allowed (or required, if the target company is listed on *Novo Mercado* or *Nível 2* trading segments of B3) to present an opinion to the company's shareholders on the terms of the offer and whether the offer should be accepted or not. The opinion shall cover all aspects relevant to the shareholders' decision making process, including the offer price, and shall provide a description of the main changes in the financial situation of the company that have occurred since the last disclosure to the market of its financial statements or periodic information.

Where there is a takeover offer for the acquisition of share control which includes an offer to acquire all voting shares of the free float, the shareholders who decide not to sell their shares will have the right to sell them after the offer ends and for a period of 30 days thereafter, for the final price of the offer, added by the Selic Rate.

In takeover offers for the acquisition of such number of shares as to gain share control only rather than the acquisition of all shares of the free float of a particular class or type, the offerees may decide that they will only sell their shares conditioned upon the offer being successful. If the offer is not successful, the offeror will not be able to acquire shares by means of the takeover offer.

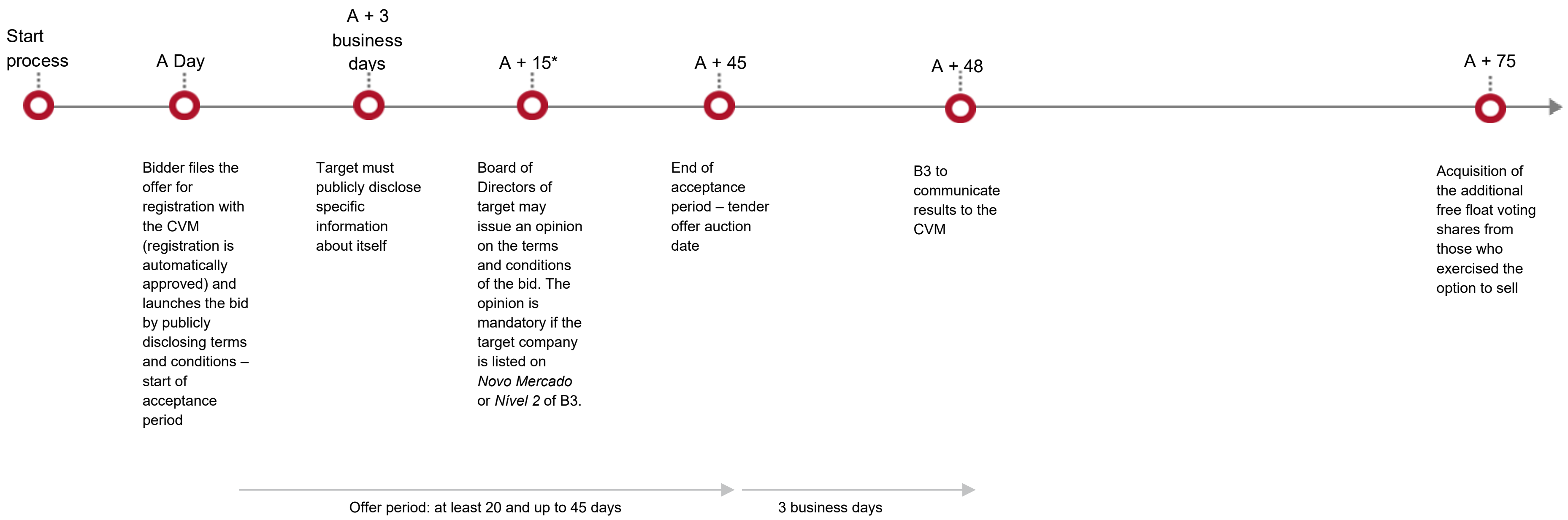
5. Timeline

The table below contains a summarized overview of the main steps and timeline of a typical voluntary public takeover bid for the acquisition of the share control under Brazilian law.

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing, draft tender offer notice). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2.	Launching of the bid: • The bidder files the offer for registration with the CVM. The approval of the registration is automatically granted by the CVM, unless the offer is made for payment with securities. The bidder discloses the bid to the market.
3.	The target company is required to disclose specific information about itself, within three business days of the publication of the tender offer bid. For further information see 3.8.
4.	The board of directors of the target company may issue an opinion on the terms and conditions of the takeover bid (the opinion is mandatory if the target company is listed on *Novo Mercado* or *Nível* 2).
5.	Acceptance period: • Start: with the disclosure of the tender offer notice to the market. • Duration: not less than 20 days and not more than 45 days.
6.	Tender offer auction date at the end of the acceptance period.
7.	B3 will communicate the results of the offer to the CVM within three business days following the tender offer auction date.
8.	Disclosure to the market of the results of the bid by the bidder and of information on the acquisition of the share control by the bidder and the target company.
9.	Acquisition by the offeror, within 30 days following the auction date, of the additional shares from minorities that did not participate in the tender offer but that decided to sell their shares.

Set out below is an overview of the main steps for a voluntary public takeover for the acquisition of the share control in Brazil.

Voluntary public takeover (indicative timeline for cash offer)*



Start process

A Day

Bidder files the offer for registration with the CVM (registration is automatically approved) and launches the bid by publicly disclosing terms and conditions – start of acceptance period

A + 3 business days

Target must publicly disclose specific information about itself

A + 15*

Board of Directors of target may issue an opinion on the terms and conditions of the bid. The opinion is mandatory if the target company is listed on *Novo Mercado* or *Nível 2* of B3.

A + 45

End of acceptance period – tender offer auction date

A + 48

B3 to communicate results to the CVM

A + 75

Acquisition of the additional free float voting shares from those who exercised the option to sell

Offer period: at least 20 and up to 45 days

3 business days

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* If the offer involves payment with securities, the approval of the registration by the CVM will not be automatically granted.

6. Takeover Tactics

6.1 Inside information

The members of a Brazilian listed company's management have an obligation to immediately disclose to the public all "material information" that relates to the company, including all material changes to information that has already been disclosed to the public.

In this context, "*material information*" shall be considered as any decision of the controlling shareholder, shareholders' meeting or any administration body of a listed company, or any other act or fact of an administrative, political, technical, managerial or economic/financial nature that has occurred or is related to the business of the company, which may considerably influence: (a) the trade price of the securities issued by the company or of the securities referenced thereto; (b) the investors' decision to purchase, sell or keep the securities issued by the company or the securities referenced thereto; or (c) the investors' decision to exercise any rights arising as a result of being a holder of the company's securities or of securities referenced thereto.

It is up to the company to determine if certain information qualifies as "material information". This can be a difficult exercise, and there may be gray areas as to whether certain events will need to be disclosed or not. The CVM has indicated several examples of types of information that should be considered as potentially material for the purposes of disclosure, including, but not limited to, the following:

- the execution of an agreement or contract for the transfer of the listed company's corporate control;
- change in the control of the company, including as a result of the execution, amendment or termination of a shareholders' agreement;
- the admittance or withdrawal of a shareholder who maintains an operational, financial, technological or administration agreement or contract with the listed company;
- authorization for the admission to trade securities issued by the listed company in any market, whether foreign or Brazilian;
- the delisting of the company;
- any merger, amalgamation or spin-off involving the company or related companies;
- the renegotiation of debts;
- the approval of stock option plans;
- any amendment to rights and advantages attached to securities issued by the company; and
- the filing for reorganization, bankruptcy or any lawsuit that may affect the economic or financial health of the company.

6.2 Public takeover bid

In the event of a potential public takeover bid, Brazilian takeover rules provide that no announcement is to be made until the disclosure of the tender offer notice. If any leaks or rumors occur at such a time, the potential acquirer and the company will be subject to the early disclosure rules summarized in 3.7.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Brazilian law is set forth in the Corporations Law, the Securities Law and CVM Resolution No. 44 and CVM Resolution No. 62.

Insider trading is expressly forbidden in Brazil. As a general rule, the controlling shareholders, the board of directors, the board of officers, the audit board and any other statutory board, as well as anyone with access to material non-public information, are prevented from using such information to obtain undue advantage, either for themselves or third parties in the purchase or sale of securities. All Brazilian listed companies are required to approve a policy for the disclosure of material facts or acts and maintain confidentiality with respect to information that remains undisclosed to the market.

Violation of the laws and regulations concerning insider trading subjects the violator to both administrative penalties imposed by the CVM and criminal charges imposed by the Securities Law. Moreover, the party suffering losses due to participation in the purchase and sale of securities may claim indemnification against the insider in court.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities. To that effect, during the takeover offer period, the offeror, its related parties and any third party intending to interfere in the offer auction to purchase shares may not:

- dispose, directly or indirectly, of shares of the same type or class as the shares that are subject to the offer, other than in the public offer auction;
- acquire shares of the same type or class as the shares that are subject to the offer in circumstances where the public offer is not intended to acquire all the free float shares of a particular class or type; and
- carry out transactions with derivatives related to shares of the same type or class as the shares that are subject to the offer.

If there is a breach of the restrictions related to the trading of shares during the public offer period, the price per share in the takeover offer shall not be less than the highest price paid by the offeror or its related parties in transactions carried out during the public offer period, added by the Selic Rate.

In addition, during the course of a takeover offer:

- the offeror, the target company, the administrators of the target company, those related to any of them and the third parties launching a competing offer (if any) shall immediately inform the market of any transaction involving, directly or indirectly, securities of the target company, and of any contracts or any other kind of agreement, including letters of intent and options, for the acquisition or disposal of securities of the target company, or executed with the company, its administrators or shareholders representing more than 5% of the shares that are subject to the offer, or their related parties;
- the target company, the administrators of the target company, those related to any of them and the third parties launching a competing offer (if any) shall immediately inform the market of any transactions with derivatives related to the shares of the target company; and
- any person or group of persons acting jointly, representing directly or indirectly 5% or more of a given type or class of shares of the target company, or of derivatives related to the target company's shares, shall immediately inform the market of:

(a) any direct or indirect variation of its holding of a given type or class of shares by more than 1%;

(b) the acquisition or disposal of rights over the shares mentioned above, including by contract and options, representing more than 1% of a given type or class; and

(c) transactions with derivatives related to shares which, taken individually or in the aggregate, represent more than 1% of a given class or type.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1.1 Poison pill Requirement for an acquirer of a relevant equity interest in a Brazilian listed company (usually 25% to 30% of the voting shares) to launch a tender offer for the acquisition of the remaining shares of the free float, for a price usually including a premium over the market value of the company.	• Requires an express provision in the bylaws of the company, detailing the specific requirements to trigger this poison pill.
1.2 Shareholders' agreements Shareholders undertake to consult with a view to vote their shares in accordance with terms agreed among them.	• The shareholders could be considered as "acting in concert". • Assumes a stable shareholder base or reference shareholders.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

The Corporations Law expressly provides that if less than 5% of the total shares issued by the company remain in the free float after a successful delisting tender offer, it is possible to implement the redemption of such shares, and, therefore, squeeze out the remaining minorities, upon payment of the same price as paid in the offer, added by the Selic Rate from the financial settlement of the tender offer until the deposit of the redemption price. The redemption must be approved by a special shareholders' meeting of the company and the redemption monies must be deposited at a Brazilian financial institution for collection. The deposit must be disclosed as material information.

7.2 Sell-out

In the event of a takeover offer for the acquisition of share control in which the acquirer seeks the acquisition of all voting shares of the free float (and of offers made by the target company itself, or by the controlling shareholder or those acting in concert with the controlling shareholder resulting in the free float shares being less than 15% of the shares of a type and class – or where the free float shares, prior to the offer, already represented less than 15% of a type and class of shares), the shareholders who decide not to sell their shares will have the right to sell them after the offer ends for a period of 30 days thereafter, for the final offer price (added by the SELIC Rate).

7.3 Squeeze-out followed by a merger

Other than the squeeze-out following the successful conclusion of a delisting tender offer and other instances where the shareholder did not pay the portion of the corporate capital it had subscribed, the Corporations Law does not authorize the squeeze-out of minority shareholders.

7.4 Conditions for acquiring securities within one year after the takeover bid period

For one year following the end of the takeover bid period, the controlling shareholder and the persons acting in concert with it are required to pay the difference between the price paid to the shareholders who tendered their shares in the takeover bid and the price that would otherwise be due to them had they not tendered their shares if (a) the offeror launches a voluntary offer, except if the latter was already disclosed at the time of the first takeover bid, (b) the offeror is required to launch any mandatory tender offer, or (c) there is any corporate transaction which triggers the right of the minority to withdraw from the company pursuant to the Corporations Law, except if the corporate transaction was already disclosed at the time of the first takeover bid.

8. Delisting

Taking a listed company private is subject to the prior authorization of the CVM and must be preceded by a delisting tender offer for the acquisition of the free float shares of the target company. This offer may be made by the controlling shareholder or the company itself and shall be for the acquisition of all outstanding shares of the free float. In summary, the following requirements are applicable, among others:

- the offer price per share must be fair and duly supported by an appraisal report prepared in accordance with CVM Resolution No. 215. The appraisal report can be discharged in certain specific cases set forth in CVM Resolution No. 215. Unless the appraisal report is discharged as mentioned above, the price must be at least equal to the appraisal value of the target company, added by the Selic Rate from the base date used by the appraisal report until the financial settlement of the offer, based on the following criteria: (a) weighted average trade price of the securities in the stock exchange, (b) book value, (c) discounted cash flow, (d) multiples comparison, and/or (e) other criteria accepted by the CVM.

- Holders of at least 10% of the free float shares have the right to request the managers of the target company to call a special meeting of holders of the free float shares to decide on the revision of the offer price and preparation of an appraisal report by an appraising firm of their choice that meets the requirements of the CVM, if they understand that the price offered is not the fair one. This right applies regardless of whether or not the appraisal report was originally discharged as mentioned above; and

- shareholders representing more than two-thirds of the "eligible shares" must (a) accept the offer or (b) expressly agree to the delisting of the company. For this purpose, only the free float shares whose owners register themselves to participate in the public offer will be deemed as "eligible shares". The condition in item (b) will be deemed satisfied if no one registers to participate in the offer. The two-thirds threshold is reduced to the majority of the "eligible shares" when the free float shares represent less than 5% of the total capital stock. If the same offeror launched a public offer for the acquisition of share control within less than six months prior to the filing for registration with the CVM of the delisting tender offer, the adherences to the offer for the acquisition of the share control can be computed to the two-thirds threshold if: (i) more than two-thirds of all the float shares accepted the public offer for the acquisition of the share control, and (ii) the price offered in the de-listing tender offer is at least equal to the price offered in the public offer for the acquisition of the share control, added by the Selic Rate.

Additional rules and requirements need to be observed to delist the company from the special trading segments of B3.

9. Contacts

Lara Schwartzmann in the São Paulo office is the most appropriate contact within Trench, Rossi and Watanabe Advogados* for inquiries about public M&A in Brazil.

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Canada

1. Overview

The acquisition of a Canadian public company may be structured as a corporate transaction or a "takeover bid". The rules for acquiring a Canadian public company are complicated and involve aspects of securities, corporate and administrative law.

Corporate transactions typically take the form of a plan of arrangement (which requires court approval before implementation), statutory amalgamation or other corporate reorganization, and require the approval of the target's shareholders.

A takeover bid is the Canadian equivalent of a US tender offer. The acquirer must follow a prescribed process when launching and completing a bid.

2. General Legal Framework

2.1 Takeover bids – legal framework

Each of the provincial and territorial Canadian securities administrators (CSAs) has jurisdiction over takeover bids in its respective province or territory through its provincial or territorial Securities Acts. All of the provincial and territorial acts have generally been harmonized. Further, the regulatory regime governing the conduct of takeover bids is harmonized in all Canadian jurisdictions through the application of National Instrument 62-104 Take-Over Bids and Issuer Bids (NI 62-104).

In Ontario, Québec, Alberta, Saskatchewan, Manitoba and New Brunswick, additional disclosure, valuation and security holder approval requirements may apply to certain transactions that involve the rights of minority security holders and which may raise conflict of interest concerns, specifically: insider bids, issuer bids, specified business combinations and related party transactions. These additional requirements can be found in Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions (MI 61-101). In any event, these requirements apply to companies whose securities are listed on certain stock exchanges, such as the Toronto Stock Exchange or the TSX Venture Exchange.

National Policy 62-202 Take-Over Bids – Defensive Tactics (NP 62-202) sets out the view of the CSAs on takeover bid defensive tactics.

The early warning reporting regime (EWR regime) applies when a person or company acquires ownership of 10% or more (on a partially diluted basis) of the voting or equity securities of a reporting issuer. This provides the market with immediate notice that a particular person or company is accumulating a significant block of voting or equity securities of a reporting issuer. The provisions comprising the EWR regime can be found in NI 62-104 and National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues.

The target's corporate statute typically has application solely in the squeeze-out or follow-on transaction context. The applicable exchange also has some oversight over takeover bids, mostly relating to trading issues.

2.2 Corporate transactions

Friendly acquisitions in Canada are typically structured as corporate transactions under the target's corporate statute as amalgamations, reorganizations and, most often, plans of arrangement or "arrangements". Arrangements are court approved "mergers". They permit the parties to structure a combination in ways that are not contemplated by corporate statutes. They are also often used to address tax issues relating to the merger and usually combine many steps into one transaction in a specified order.

Arrangements are subject to requirements imposed by (i) the corporate statute governing the company, (ii) the securities regulatory authorities in the jurisdictions in which the company is a reporting issuer, such as many of the rules (including MI 61-101) described above and (iii) the company's stock exchange, to some degree.

2.3 Supervision and enforcement by the provincial or territorial regulatory authorities

Public takeover bids and plans of arrangement are subject to the supervision and control of securities regulatory authorities in the jurisdiction in which the company is a reporting issuer. The regulatory authority in the company's jurisdiction of incorporation or head office is, in most cases, the principal securities regulator of such company and the other jurisdictions generally defer to the principal regulator under a prescribed harmonization model.

The securities regulatory authority has a number of legal tools that it can use to supervise and enforce compliance with the applicable rules, including administrative fines, penalties and cease trade orders. In addition, sanctions could be imposed by the courts in case of non-compliance.

The securities regulatory authority also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid or arrangement.

2.4 General principles

The primary objective of the takeover bid provisions and the provisions relating to corporate transactions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which takeover bids and other transactions may proceed in an open and even-handed environment. The takeover bid provisions should favor neither the offeror nor the management of the target company and should leave the shareholders of the target company free to make a fully informed decision.

2.5 Foreign investment restrictions

Foreign investment in Canada is regulated by the Investment Canada Act (ICA). Generally speaking, a foreign investor seeking to acquire control of an established Canadian business valued at or above a prescribed financial threshold must apply for review of the investment's likely net benefit to Canada and may not complete the acquisition until approval is obtained. The review threshold differs for investments from World Trade Organization (WTO) members (WTO Investors), private investors from jurisdictions with which Canada has trade agreements, state-owned investors, non-WTO investors and investments in Canadian cultural businesses. For all other investments valued below the prescribed financial threshold, foreign investors need only file a notification (before or within 30 days of closing) and the investment is not reviewable for net benefit. A notification is required when an investor from a WTO member jurisdiction indirectly acquires control of an existing Canadian business or when a foreign investor establishes a new business in Canada.

The ICA also contains an independent national security review regime (similar to the Committee on Foreign Investment in the United States) that applies to all acquisitions by foreign investors, regardless of value and level of ownership, and can result in conditions or prohibition if an acquisition is found likely to be injurious to Canada's national security. In the case of a reviewable investment, national security review will generally be conducted in parallel with net benefit review. For investments that require only a notification, foreign investors can obtain certainty in respect of national security risk by filing the notification before closing to allow the 45-day initial national security screening period to expire. Foreign investors may submit a voluntary notification for otherwise non-notifiable and nonreviewable investments to obtain certainty in respect of national security risk. If such a foreign investor chooses not to voluntarily notify, the amendments extend the national security review screening period from 45 days after closing to five years.

Recent amendments to the ICA will require foreign investors to file mandatory pre-closing notifications for certain investments in prescribed sectors that are not currently subject to review or notification. The prescribed sectors are likely to be similar to the "Sensitive Technology Areas" set out in Canada's Guidelines on the National Security Review of Investments. These amendments are expected to come into effect in 2025.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights, powers and obligations that are attached to different levels of holdings of voting shares within a corporation subject to the Canada Business Corporations Act and applicable securities laws. Canadian corporations may be incorporated under this federal statute or under the corporate statute of a province or territory of Canada, which may provide for slightly different shareholder rights:

Shareholding	Rights
One share	The right to attend and vote at annual shareholders' meetings. The right to access certain corporate records and obtain annual financial statements. The right to apply to a court for an oppression remedy where the actions of the company, management or directors are oppressive or unfairly prejudicial to, or unfairly disregard, the interests of the shareholder. The right to fair value for shares where the shareholder dissents from approving certain fundamental corporate changes.
1% or shares representing C$2,000 fair market value, held for at least six months	The right to submit a proposal to the company to be discussed and voted on at the next annual meeting.
5%	The right to requisition a meeting.
10% (on a partially diluted basis)	The obligation to prepare an early warning report.
20% (on a partially diluted basis)	The obligation to make a formal takeover bid (or otherwise rely on an exemption) if acquiring more shares.
More than 33$^{1}/_{3}$% (at a special shareholders' meeting)	The ability at an annual shareholders' meeting to block the matters set out for shareholdings of 662/3%, below
More than 50% (at annual shareholders' meeting)	The ability at an annual shareholders' meeting: • to determine the outcome of an election of directors; and

Shareholding	Rights
	• to determine the outcome of a proposed resolution for which a special resolution (66$^2/_3$% vote) is not required (see below).
66$^2/_3$%	The right to effect fundamental changes to the company by special resolution, such as: • changing its name; • amending its articles; • creating new classes of shares or changing the rights, privileges, restrictions and conditions of any of its shares; • approving the sale, lease or exchange of all or substantially all of the company's property other than in the ordinary course of business; • approving the liquidation and dissolution of the company; and • approving the amalgamation (merger) of the company with another company.
90%	The right to exercise the "compulsory acquisition" of shares following a successful takeover bid, i.e., if, within 120 days after the date of the bid, the bid is accepted by holders of not less than 90% of the shares other than shares held by the bidder or its affiliates or associates.

3.2 Restrictions and careful planning

Canadian law contains a number of rules that apply before a public takeover bid is announced. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to the EWR regime, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake and file an early warning report if its holdings of voting or equity securities have passed applicable disclosure thresholds. The relevant disclosure (early warning) thresholds in Canada are 10% and, thereafter, every increase or decrease of 2% or more or decreases below 10% of the outstanding class of voting or equity securities that was the subject of the most recent disclosure. Similar disclosure must be made if there is a change in any material fact in the required disclosure. The potential bidder must disclose the purpose of the acquisition(s) and any plans or future intentions. If it intends to launch a takeover bid, this must be disclosed.

When determining whether a threshold has been passed, a potential bidder must include securities underlying derivative securities convertible within 60 days, whether or not on conditions. The bidder must also consider the voting securities held by the parties with whom it acts jointly or in concert or may be deemed or presumed to act jointly or in concert (see 3.7 below). These include affiliates and associates. The parties may also have to include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements (such as call option agreements).

The potential bidder (or any person acting jointly or in concert with such) must not acquire or offer to acquire beneficial ownership, control or direction over shares in respect of which the above disclosure was required to be filed until the expiry of the first business day following the date that the disclosure is filed. This does not apply with respect to holdings of securities that constitute 20% or more of the class (for which the potential bidder must comply with the formal takeover bid rules or rely on an exemption therefrom).

The above 10% disclosure threshold drops to 5% if a takeover bid has been made.

3.4 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all material changes. The facts surrounding the preparation of a public takeover bid or arrangement may constitute a material change. If so, the target company must announce this. However, the board of the target company can delay the announcement in certain circumstances. For instance, this could occur if the transaction has not been agreed to fully and the target's board believes that an early disclosure would prejudice the negotiations regarding a bid.

3.5 Early disclosures

Canadian regulatory authorities do not have a right to request a person that could be involved in a possible public takeover bid to make an announcement without delay. However, if the bidder acquires shares past the applicable thresholds set out in 3.3, it is required to disclose the purpose of such transaction, in addition to its holdings. If there is an intention to launch a takeover bid, this intention must be disclosed. If the bidder has previously filed an early warning report, it must update the early warning report to disclose this new intention.

3.6 Due diligence

The Canadian public takeover bid rules do not contain specific rules regarding whether or how prior due diligence can or should be organized. However, the concept of a prior due diligence or pre-acquisition review by a bidder is universally accepted in Canada for friendly bids, and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse, early disclosure and potential competition concerns. These include the use of strict confidentiality procedures, non-disclosure agreements and data rooms.

3.7 Joint actors

The issue of whether or not persons are "joint actors" is one of fact. For the purposes of the Canadian takeover bid rules, a person is deemed or presumed to be "acting jointly or in concert" with an offeror if it is:

(a) (*deemed*) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;

(b) (*presumed*) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the target; or

(c) an affiliate (*deemed*) or associate (*presumed*) of the offeror.

This is especially relevant in relation to the potential obligation to make a formal takeover bid. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 20% threshold, the members of the group will have a joint obligation to carry out a formal takeover bid, even though the individual group members do not pass the 20% threshold.

4. Effecting a Takeover

As previously mentioned, there are two principal ways in which an offeror could effect an acquisition of the target:

- a takeover bid (often followed by a compulsory acquisition of all the shares not tendered in the bid (if available) or another form of subsequent acquisition transaction); or
- a court approved plan of arrangement or other corporate transaction.

The method of acquisition is often determined based on the cooperation (or lack thereof) of the target. In a hostile acquisition environment, the acquirer would only have the option of structuring the acquisition as a takeover bid (since a plan of arrangement requires the target's cooperation). In a friendly acquisition environment, the determination to proceed with either structure will be dependent on the particular facts of each case and may be influenced by tax considerations.

The following provides a general overview of each of these two acquisition methods and discusses certain advantages and disadvantages associated with each. Illustrative timelines are also included for reference in 5.

4.1 Takeover Bids

(a) What is a takeover bid?

A takeover bid is an offer to acquire outstanding voting or equity securities of a class made to shareholders of the target in a Canadian jurisdiction, where the securities subject to the offer, together with the offeror's existing holdings, constitute 20% or more of the outstanding securities (on a partially diluted basis) of that class. Existing holdings include securities held by any person or company deemed to be "acting jointly or in concert" with the offeror.

(b) To whom must the bid be made?

Subject to certain exemptions, a formal bid must be made to all Canadian holders of securities of the class subject to the bid and delivered to holders of securities that may be converted into securities of that class before the expiry of the bid. The offeror is required to comply with the takeover bid regime in each of the jurisdictions in which shareholders of the target reside.

(c) Confidentiality agreement

In a friendly bid, the parties often enter into a confidentiality or non-disclosure agreement. In addition to regulating the disclosure and use of confidential information, confidentiality agreements also typically include "standstill" provisions that will limit the offeror's ability to acquire target securities, or to undertake any transaction or other actions that have not been approved by the target's board, for a period of time after the due diligence period.

(d) Acquiring a "toe-hold"; early warning reporting

The acquisition of a "toe-hold" position in the target's securities (up to 19.99%) is permitted, subject to compliance with the EWR regime. For further information, see also the pre-bid integration trading restrictions discussed below.

Every offeror who, together with any joint actors, acquires a 10% stake (on a partially diluted basis) in a Canadian public company must immediately issue a press release and, within two business days, file an early warning report with securities regulators. This report must include disclosure of the offeror's intentions in purchasing the securities and any future intentions to acquire additional securities. Similar disclosure must be made whenever a further 2% interest is acquired or disposed, there is a decrease below 10% or there is a change in any material fact in the required disclosure. Once 20% or more of the voting or equity securities have been or are proposed to be acquired, the provisions relating to takeover bids apply.

(e) Insider trading restrictions

The acquisition of target securities by the offeror itself does not give rise to liability under Canadian insider trading rules, unless the offeror has knowledge of undisclosed material information concerning the target. However, any insider of the offeror, e.g., a director, officer or principal shareholder, is subject to insider reporting and trading rules (as are certain other persons in a 'special relationship') and should not, among other things, acquire securities of the target with knowledge of the undisclosed proposed bid.

(f) Pre-bid integration trading restrictions

Certain pre-bid integration rules apply with respect to certain shares of the target acquired by the offeror within 90 calendar days prior to the making of a bid. For example, the offeror must offer consideration in the same form and which is at least equal to the highest consideration paid under any of the pre-bid transactions or must offer at least the cash equivalent of such consideration.

(g) Lock-up agreements

Before (or after) making an offer, the offeror is free to seek lock-up agreements from shareholders of the target. Lock-up agreements can be "hard" (where the shareholder's undertaking to tender into the bid is irrevocable) or "soft" (where the shareholder agrees to tender but is free to withdraw if a higher competing bid is made).

To avoid making the locked-up shareholder a "joint actor" of the offeror, no collateral benefit, i.e., a benefit not offered to other shareholders, may be offered and the locked-up shareholder cannot actively participate in the strategy of the bid.

(h) Support agreement

In a negotiated transaction, it is customary for the offeror and the target to enter into a support agreement. The support agreement usually covers issues such as (i) the terms and conditions of the transaction (including the amount and form of consideration to be exchanged for the securities of the target), (ii) management's support of the transaction, (iii) break fees, (iv) "no-shop" provisions and (v) representations, warranties and covenants.

(i) Defensive tactics

Directors of Canadian companies have both statutory and common law fiduciary duties to act honestly and in good faith with a view to the best interests of the corporation, and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In a negotiated transaction, this is achieved through bargaining, the creation of a special (typically independent) committee and the use of independent professional advisers.

However, where an offeror makes an unsolicited bid or the bid is otherwise unsupported by the directors of the target, the directors have an array of defensive tools which can be used to delay or thwart the bid if they deem it necessary, subject to their overarching fiduciary obligations. These may include: (i) employing a shareholder rights plan (also known as a "**poison pill**"), although changes to the law in May 2016 have limited the general usefulness of poison pills (see 6), (ii) finding an alternative purchaser (also known as a 'white knight'), (iii) disposing of certain key assets (also known as 'selling the crown jewels') or engaging in other restructuring transactions for business purposes in the best interests of the target (and preferably in advance of a bid), (iv) seeking a strategic investment from a friendly party in the best interests of the target (and preferably in advance of a bid), or (v) bringing legal or regulatory challenges to the bid.

(j) The offer

All shareholders of the target must be offered identical consideration. Accordingly, agreements that have the effect of paying an indirect premium to certain shareholders are prohibited. Certain collateral agreements are permitted in limited circumstances (such as a specified employment agreement with a senior officer of the target who is also a shareholder).

An offeror may attach almost any condition to its obligation to complete a takeover bid, e.g., minimum tender condition, receipt of requisite government consents and absence of material change. In the case of cash consideration, takeover bid legislation requires an offeror to have made adequate arrangements prior to the bid to ensure that funds are available to acquire all of the securities subject to the bid. Such financing arrangements may be subject to conditions, if, at the time the bid is commenced, the offeror reasonably believes the possibility to be remote that, if all other bid conditions are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied.

(k) Timing and process

A takeover bid may be kept open for any amount of time, provided that it remains open for at least 35 days if certain conditions applicable to a friendly bid are met (or 105 days otherwise).

The offeror may vary the terms of a bid made (including to extend the bid) at any point up to the expiry of the offer (subject to complying with certain prescribed requirements).

The offeror may not take up any shares deposited in acceptance of the bid until after the bid period has expired.

For a bid that is not a partial bid, if all the terms and conditions of the bid have either been met or waived, the offeror must take up and pay for all shares deposited no later than 10 days after the expiry of the bid and any securities taken up by the offeror under the bid shall be paid for as soon as possible, and in any event not more than three business days after the taking up of the securities.

A target shareholder may withdraw target shares deposited under the bid at any time if (i) the target shares have not yet been taken up by the offeror, (ii) if the target shares have been taken up by the offeror but not paid for within three business days or (iii) within 10 days from the date of notice of change or variation of the bid.

If there is a variation including any extension in the bid, the offeror must send a notice of variation to the shareholders and, in some circumstances, the bid period must be extended by at least 10 days (see 6).

(l) Disclosure obligations

A takeover bid circular must be prepared by the offeror and sent to the target and its shareholders. The circular includes a certificate of the offeror certifying that the circular does not contain a misrepresentation. Canadian securities laws provide that, where a takeover bid circular contains a misrepresentation, each security holder has a right of action for recession or damages against the offeror and for damages against, among others, its directors and executive officers who signed the certificate in the circular. In addition, the circular must be filed with the securities regulatory authority of each jurisdiction in which shareholders of the target are resident. However, the circular is not automatically subject to formal review by the regulatory authorities prior to its use.

The offeror's circular must contain certain prescribed information about the offer and the offeror (including prospectus level disclosure about the offeror where share consideration is involved).

Within 15 days of the bid, the directors of the target must send a circular to the shareholders of the target, the offeror and securities regulators containing certain prescribed information, including (i) the directors' recommendation to accept or reject the bid and the reasons for making those recommendations, (ii) if no recommendation is made or is unable to be made, the reasons for not making or being unable to make the recommendation, or (iii) if considering to accept or reject the bid, the reasons for not making a recommendation and may advise not to dispose securities until directors provide further communication in accordance with (i) or (ii).

(m) Restrictions on trading during the bid

Subject to one specified exception (allowing the purchase of up to 5% of the target shares on the market if certain prescribed requirements are met), an offeror may not acquire shares of the target during the term of the bid.

(n) Post-bid considerations and post-bid purchases

For post-bid considerations and restrictions on post-bid purchases, see 7 below.

4.2 Arrangements

(a) Arrangement agreement

As an arrangement is a negotiated transaction, a common step is the entering into of an arrangement agreement between the offeror and the target. The arrangement agreement usually covers issues such as (i) the terms and conditions of the transaction (including the amount and form of consideration to be exchanged for the securities of the target), (ii) mutual representations, warranties and covenants, (iii) break fees, (iv) "no shop" provisions, and (v) the calling of a shareholders' meeting to vote on the arrangement.

(b) Interim court order

Once the arrangement agreement has been entered into, the parties apply for court approval. In the first of two applications, the court is asked to direct that a shareholders' meeting be held to consider the arrangement and to prescribe the level of voting required to approve the arrangement. The court will usually require the approval of at least $66^{2}/_{3}$% of shareholder votes and may, if appropriate, also require that the arrangement be approved by a majority of the target's disinterested shareholders. The court will typically expect the offeror to grant rights of dissent to shareholders who do not approve of the transaction and wish to be paid fair value for their shares instead of the consideration being offered under the arrangement.

(c) Shareholder approval

The target's directors are required to prepare and mail an information circular to its shareholders in connection with the special meeting called to consider the transaction. If the approval of the shareholders of the offeror is required as a result of the structure of the transaction, the offeror also sends an information circular to its shareholders. The target and offeror circulars can be combined into one. The information circular will contain certain prescribed disclosure about the offer and the offeror (including prospectus level disclosure about the offeror where share consideration is involved). In addition, the circular usually contains a copy of a fairness opinion from a financial adviser stating that the consideration to be received by the target's shareholders in the transaction is fair, from a financial point of view, to the shareholders.

(d) Final court order

If the required levels of shareholder approval are obtained at the shareholders' meeting, the court will be asked to give its final approval for the arrangement in a hearing at which all affected security holders are entitled to attend. In sanctioning the arrangement, a court will consider whether the statutory requirements have been strictly complied with and whether the arrangement is fair and reasonable to all classes of affected security holders.

5. Timeline

The table below contains a summary of the main steps of a typical public takeover bid process under Canadian law.

Step
1. Preparatory stage: • Board of directors of the bidder meets to consider proceeding with the bid. • Approach the target and significant shareholders and attempt to negotiate terms of the support agreement/lock-up agreement. • Request shareholder list from target company. • Finalize offer documents. • Translate offer documents into French (if takeover bid is being made in Québec).

Step	
	• Board of directors of the bidder approves bid and offer documents, support agreement and lock-up agreements. • Execute final support agreement and lock-up agreements. • Announce execution of support agreement and lock-up agreements.
2.	Launching of the bid: • Mail offer documents to shareholders of the target company and file with securities regulatory authorities and applicable stock exchanges.
3.	Within 15 days of the bid, directors' circular (of the target company) mailed to its shareholders and filed with securities regulatory authorities and applicable stock exchanges.
4.	Expiry of bid (open for a minimum 105 days from date of bid, subject to shortening to 35 days under certain friendly scenarios (initial deposit period)): • Bidder issues press release confirming it has achieved the 50% minimum tender requirement (and all other terms and conditions have been complied with or waived), disclosing the number of shares deposited and to be taken up and paid for, and that bid has been extended by at least 10 days.
5.	Bidder immediately takes up shares deposited under bid and, not later than three business days (assuming not a partial bid) thereafter, pays for such shares.
6.	Bid extended by mandatory minimum 10 days after initial deposit period: • Bidder issues press release after expiry of bid disclosing the number of shares deposited and to be taken up.
7.	Bidder takes up and pays for shares (deposited during the mandatory 10-day extension period) not later than 10 days after the deposit.
8.	Commence second stage transaction, if applicable.

A typical timetable for a plan of arrangement is as follows:

Step	
1.	Preparatory stage: • Meeting of the board of the offeror to consider proceeding with arrangement. • Approach the target and negotiate terms of the arrangement agreement. • Approach significant target shareholders in respect of support agreements and negotiate same. • Meeting of the board to approve terms of the arrangement agreement. • Execution of the arrangement agreement. • Announce execution of the arrangement agreement by press release. • File material change report in respect of execution of the arrangement agreement. • Preparation of draft proxy circular, notice of meeting and proxy forms for shareholders of the target.
2.	Record date for meeting of target shareholders, not more than 60 days and not less than 30 days prior to meeting date.
3.	Seek interim order of court regarding arrangement, prior to mailing of meeting materials.
4.	Mail meeting materials to shareholders of the target and file with securities regulatory authorities and applicable stock exchanges, at least 21 days prior to the meeting date.
5.	Meeting of security holders of target to consider arrangement.
6.	Seek final order of court to approve plan of arrangement, as soon as possible after meeting date.
7.	Completion of arrangement, subject to satisfaction of conditions to completion, by filing of articles of arrangement, as soon as possible after final court order.

Set out below is an overview of the main steps for a public takeover and a plan of arrangement bid in Canada.

Public takeover bid (indicative timeline)

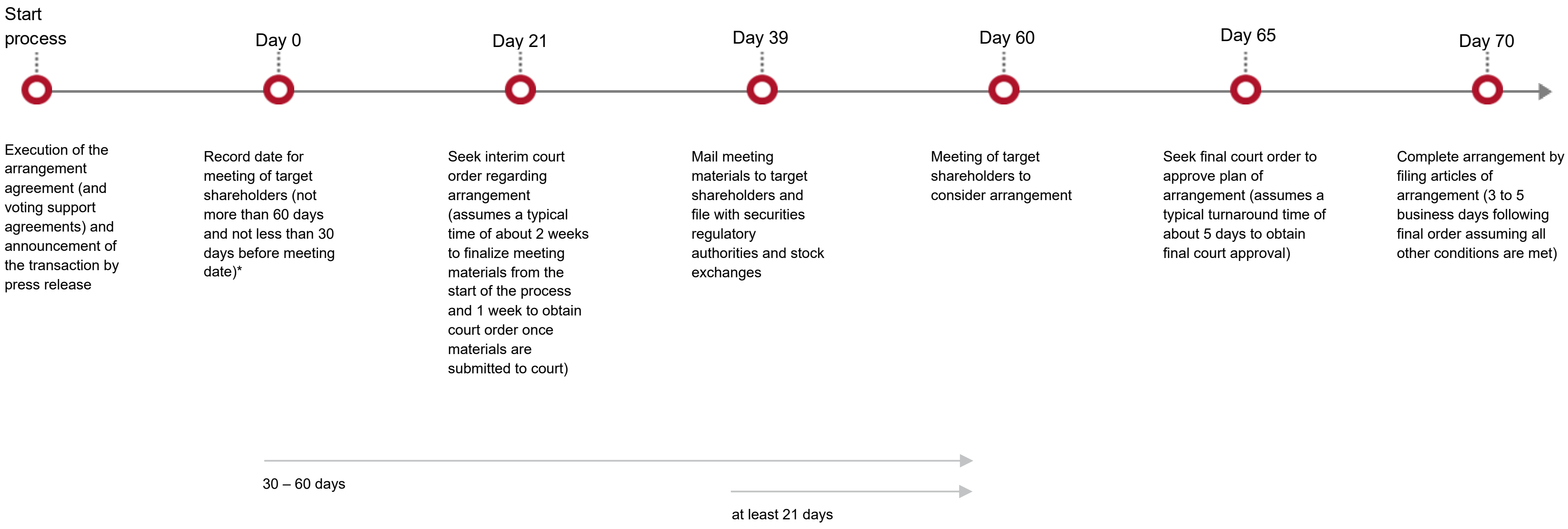
Start process	Prepare bid materials (and negotiate the support agreement if a friendly bid)
Day 0	Launch bid Offeror mails offer documents to shareholders of target and files with securities regulatory authorities and stock exchanges
Day 15	Directors' circular is sent to shareholders of target and filed with securities regulatory authorities and stock exchanges
Day 105	Expiry of bid (subject to mandatory 10–day extension)
Day 108	Bidder immediately takes up shares deposited under bid Pays for shares within 3 business days
Day 115	Expiry of mandatory minimum 10-day bid extension Bidder takes up and pays for shares deposited during extension (no later than 10 days after deposit)
ASAP	Start of "second stage" transaction, if applicable If at least 90% of target shares are tendered to the bid within 120 days after the commencement of the bid, the bidder may acquire the remaining shares

Initial deposit period: bid open for a minimum of 105 days (35 days under certain friendly scenarios)

10-day extension designed to alleviate concern that target shareholders will be coerced into tendering shares before the initial expiry of the bid (avoiding the risk of being left behind as a minority shareholder)

If less than 90% of target shares are tendered to the bid, offeror may use voting power to cause target to enter into a "second step business combination" transaction (amalgamation or other form of reorganization involving offeror / its affiliates) that must be completed within 120 days after expiry of the bid

Plan of arrangement (indicative timeline)



Start process

Execution of the arrangement agreement (and voting support agreements) and announcement of the transaction by press release

Day 0

Record date for meeting of target shareholders (not more than 60 days and not less than 30 days before meeting date)*

Day 21

Seek interim court order regarding arrangement (assumes a typical time of about 2 weeks to finalize meeting materials from the start of the process and 1 week to obtain court order once materials are submitted to court)

Day 39

Mail meeting materials to target shareholders and file with securities regulatory authorities and stock exchanges

Day 60

Meeting of target shareholders to consider arrangement

Day 65

Seek final court order to approve plan of arrangement (assumes a typical turnaround time of about 5 days to obtain final court approval)

Day 70

Complete arrangement by filing articles of arrangement (3 to 5 business days following final order assuming all other conditions are met)

30 – 60 days

at least 21 days

Some issuers are comfortable with calling the meeting before the interim court order. Others prefer to wait until the court order is obtained before setting the record and calling the meeting to ensure that the meeting materials can be finalized on the initial timeline.

6. Takeover Tactics

6.1 2016 amendments

Historically, the primary tactic used in defense of a hostile takeover bid was a shareholder rights plan or poison pill. Effective from May 2016, the CSA adopted a new takeover bid regime. The new bid regime attempts to rebalance the dynamics among Canadian bidders, target boards and target shareholders, particularly in relation to poison pills. The three key elements are:

(a) Extension of the minimum bid period to 105 days

All non-exempt takeover bids must remain open for a minimum of 105 days (rather than 35 days under the prior regime), subject to a target board's ability to reduce the bid period. The increase of the minimum bid period to 105 days addresses concerns that target boards did not have enough time to respond to hostile takeover bids.

A target board may reduce the bid period:

- by issuing a news release announcing a shorter bid period for a specific takeover bid (which cannot be less than 35 days), in which case all outstanding or subsequent takeover bids will also become subject to the shorter minimum bid period (a bidder can, of course, elect to keep its bid open for longer); or
- by issuing a news release indicating that it has agreed to enter into or determined to effect a specified alternative transaction (generally, a plan of arrangement or other change of control transaction requiring shareholder approval), in which case all outstanding or subsequent takeover bids must remain open for at least 35 days.

(b) Irrevocable minimum tender condition of more than 50%

All non-exempt takeover bids must be subject to a mandatory tender condition that a minimum of more than 50% of all outstanding target securities owned or held by persons other than the bidder and its joint actors be tendered and not withdrawn before the bidder can take up any securities under the takeover bid. The purpose of this requirement is to ensure that the acquisition of control of a target through a takeover bid will only occur if a majority of independent shareholders support the transaction.

(c) Mandatory 10-day bid extension

All non-exempt takeover bids must be extended by the bidder for at least 10 days after the bidder achieves the mandatory minimum tender condition and all other terms and conditions of the bid have been complied with or waived. This requirement is aimed at alleviating the concern that target shareholders will be coerced into tendering their shares before the initial expiry of the bid (for example, to avoid the risk of being left behind as a minority shareholder of an issuer with a controlling shareholder).

6.2 Rights plans and other defensive tactics

The extended minimum bid period provides the target board more time to evaluate a takeover bid, seek an alternative transaction or attempt to enhance the takeover bid. However, the target board must at all times exercise a duty of care and act honestly and in good faith with a view to the best interests of the corporation (see also 4.1(i)).

The CSA has reiterated its position, in accordance with NP 62-202, that securities regulators will examine the actions of target boards to determine whether they are abusive of security holder rights, and it may intervene where shareholders are deprived of their ability to respond to an unsolicited bid or a competing bid. The CSA are of the view that the takeover bid provisions should favor neither the offeror nor management of the target company and should leave the shareholders of the target company free to make a fully informed decision.

The utility of rights plans to block bids (by effectively restricting any person from acquiring more than a specified threshold of securities) or to extend their time is now limited due to the longer minimum bid period which gives target boards more time to respond to a bid (being the main justification for the existence of rights plans). Furthermore, a decision of the Ontario Securities Commission (OSC), has stated that it will be a rare case in which a tactical rights plan (implemented in the face of a bid) "will be permitted to interfere with established features of the takeover bid regime such as the opportunity for bidders and shareholders to make decisions in their own interests regarding whether to tender to a bid by entering into lock-up agreements of the kind under consideration in [that] case." A recent decision of the Ontario Capital Markets Tribunal (a new independent division of the OSC) confirmed the importance of a 20% (rather than 15%) triggering threshold for rights plans in light of the take-over bid regime's fundamental principles of predictability, transparency and fair treatment of shareholders. It remains to be seen what types of rights plans will be accepted as enhancing shareholder choice, though it appears they could be used to prevent certain creeping takeover bids which are otherwise still possible using limited transactions that are exempt from the formal bid requirements.

Also, the extended minimum bid period, the power of the target board to reduce the minimum bid period to 35 days and the corresponding costs and uncertainty provide more incentive for bidders to enter into friendly transactions with target companies rather than to commence a hostile bid.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Compulsory acquisition

If, within 120 days of the commencement of the bid, at least 90% of the shares of the target are tendered to the bid (other than shares held by or on behalf of the offeror or its affiliates or associates), an offeror may, acquire the remaining shares of the target at the same price offered under the bid under the "compulsory acquisition" provisions of the relevant corporate statute (subject only to the remaining shareholders' rights to dissent and demand payment of the fair value for their shares).

7.2 Squeeze-out followed by a merger

If fewer than 90% of the shares of the target are tendered to the bid (other than shares held by or on behalf of the offeror or its affiliates or associates), the offeror may requisition a meeting of the target's shareholders and use its voting power to cause the target to enter into a "second step business combination" transaction that is completed no later than 120 days after the expiry of the bid. The second step business combination might take the form of an amalgamation, plan of arrangement or some other form of reorganization involving the offeror or one of its affiliates.

In addition to obtaining two-thirds approval of votes cast by the target's shareholders entitled to vote thereon (including by the offeror with respect to its shares of the target), as required under corporate law, the completion of the transaction requires the approval of at least 50% of the target's remaining minority shareholders. Shares of the target acquired by an offeror and its joint actors before a takeover bid (and in some circumstances, pursuant to "lock-up" agreements) cannot be voted in connection with this approval of a second step business combination. However, if a certain disclosure is made in the original takeover bid circular, the offeror may vote the shares tendered into the bid as part of the required 50% approval. The shareholders affected by such actions have a right to dissent and be paid fair value for their shares.

7.3 Restrictions on acquiring securities after the takeover bid period

Subject to an exception for "normal course trades", an offeror may not purchase shares of the target after the expiry of the takeover bid until 20 business days thereafter, except by way of a transaction that is generally available to holders of that class of securities on identical terms.

8. Delisting

An application will need to be made to the relevant stock exchange to delist the securities and with the applicable securities regulatory authorities for the target company to cease to be a reporting issuer. This application to cease to be a reporting issuer usually can be made once there are fewer than 51 target company shareholders remaining worldwide, and not more than 15 shareholders in any one Canadian jurisdiction. The target company's continuous disclosure obligations under the Canadian securities regime cease once it ceases to be a reporting issuer in Canada.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

David Palumbo and Haran Viswanathan in the Toronto office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Canada.

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Chile

1. Overview

Chilean laws governing public takeovers have been designed to protect minority shareholders and increase market liquidity and transparency.

In order to provide protection for minority shareholders, Chilean laws establish that when a change in corporate control takes place, a public bid must offer prorated acquisition of all shares, with certain limited exceptions, such as in cases of equity issuances, mergers, and transfer of controlling interests that do not involve a substantial premium over market price.

Chilean laws also establish that when a controlling shareholder accumulates more than two-thirds of the shares of a listed company, the shareholder has to launch a tender offer for the remaining shares. This provision is designed to protect shareholders from very high concentrations of ownership, which may reduce liquidity and therefore restrict remaining shareholders.

For those cases where a tender offer is not mandatorily required (or voluntarily conducted), Chilean law requires a prior public announcement to be made by any person who intends to obtain a controlling interest in a listed company. The announcement must be made at least 10 business days in advance of the acquisition or as soon as negotiations begin or information and documentation related to the listed company is distributed.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Chilean law relating to public takeover bids can be found in:

- Chapter XXV of Law No. 18,045 ("**Securities Act**") relating to tender offers; and
- General Ruling No. 104 ("**Tender Offer Rules**") issued by the Financial Market Commission ("**Commission**").

2.2 Other rules and principles

While the aforementioned chapter of the Securities Act and the Tender Offer Rules contain the main legal framework for public takeover bids in Chile, there are a number of additional rules and principles within the Securities Act, Law No. 18,046 ("**Corporations Act**") and other rulings issued by the Commission that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings and other material information in listed companies based on the Securities Act and rulings issued by the Commission. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation.

(c) The rules under the Securities Act and regulations issued by the Commission relating to the public offering of securities.

(d) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement by the Commission

The Commission is the securities regulator in Chile and oversees and controls public takeover bids.

The Commission has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in the case of non-compliance.

2.4 General principles

The following general principles apply to public takeovers in Chile. These rules and principles generally flow from several provisions applicable under the Tender Offer Rules and the Securities Act:

(a) subject to certain exceptions, a mandatory tender offer is required in order to consummate any acquisition that would allow the purchaser to obtain, either directly or indirectly, the "control" of a Chilean listed corporation;

(b) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment;

(c) the offer price must be clearly determined, and it must be payable in cash or with securities that have been duly registered and can be publicly offered as consideration payable for the offered shares;

(d) each member of the board of directors of the offeree listed corporation must provide a written report reflecting their individual opinion with respect to the convenience (or inconvenience) of the offer to the shareholders of the company; and

(e) all shareholders that have tendered their shares within the offer period have the right to withdraw their acceptances at any time until the end of the offer period.

2.5 Foreign Investment Restrictions

Foreign investments are not restricted in Chile. Unless in the context of specific industries and sectors which must have Chilean national ownership, such as fishing companies, 100% foreign ownership of investments is possible. Therefore, from a foreign investment perspective, takeovers are not generally subject to prior governmental or regulatory approvals. The above is notwithstanding customary anti-trust approvals and approvals required for certain specific industry sectors (e.g., insurance, banking and telecoms), which need special authorizations for a change of control.

Although not a requirement or restriction, foreign investors may register their foreign inward investments with Chile's Foreign Investment Agency, which benefits them primarily because of foreign exchange considerations. A foreign inward investment that is registered with Chile's Foreign Investment Agency will provide the investor with the right and guarantee of access to the foreign exchange market in order to perform future returns of capital, dividend distributions and repatriation of the sale proceeds of the investment, in foreign currency.

A cash investment would also allow the foreign investor to register the foreign inward investment with the Central Bank and would be a valuable supporting tool to keep track of the investment and the cost basis incurred by the investor for Chilean tax purposes.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Chilean listed corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to vote in elections of board members. • The right to obtain a copy of the documentation submitted to general shareholders' meetings and the right to obtain sufficient, true and timely information with respect to the legal, economic and financial situation of the company. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to obtain dividends. Unless unanimous consent of all shareholders is obtained, the company must distribute at least 30% of its profits as dividends on an annual basis. • The right to retrieve its capital contribution upon liquidation of the company. • The right to freely transfer its shares. The bylaws of a corporation (*sociedad anónima*) must not contain any limitation to the free transfer of shares, but the shareholders may subscribe shareholders' agreements which may include limitations. • A pre-emptive right for the subscription of new shares issued by the company on a pro rata basis to the number of shares owned by each shareholder. • The right to withdraw from the company in case of certain decisions taken by the shareholders' meetings, such as merger, de-merger, transformation, sale of more than 50% of the company's assets, etc. If a shareholder exercises its withdrawal rights, the company must pay the market value of the shares to the withdrawing shareholder (or book value in case the shares of the company are not sufficiently traded). • The right to withdraw from a listed company in case a controller acquires 95% or more of the shares of the company. • The right to withdraw from the company in case the controlling shareholder, after acquiring two-thirds of the shares, does not launch a tender offer over the remaining shares after 30 days from reaching the two-thirds stake. • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons. • The right to file a liability claim against directors.
1%	The right to nominate independent directors, when applicable.

Shareholding	Rights
5%	The right to file a minority claim for damages, on behalf of the company, against any person who has caused a loss to the company as a consequence of a breach of the Corporations Act, its regulations, the bylaws of the company, the rules issued by the board according to law and the rules issued by the Commission.
10%	• The right to request the board of directors to convene a general shareholders' meeting. • The right to include comments in the annual report of the company.
More than 50% (at a general shareholders' meeting)	The ability to take any decision at a shareholders' meeting other than the ones that require a special quorum under the law (or the bylaws). These are the following: • Transformation, spin off or merger of the company. • Amendment of the term of the company. • Dissolution. • Change of corporate domicile. • Capital decrease. • Approval and valuation of contributions different than money. • Amendment of the faculties reserved to the shareholders' meeting or the limitations and attributions of the board. • Decrease in the number of members of the board. • Disposal of 50% or more of the assets of the company or of one of its subsidiaries that represents at least 20% of the assets of the company, or any disposal of the shares of such subsidiary that implies that the company ceases to be its controller. • The way in which the profits of the company are distributed. • Granting of guaranties to guarantee third parties' obligations, except in the case of subsidiaries. • Acquisition of shares issued by the company. • Others that the bylaws may include. • Validation of formal nullity vices in connection with any of the above matters. • To grant the squeeze-out right referred to below. • Approve or ratify related party transactions.

Shareholding	Rights
Two-thirds of the voting shares	The ability to take any decision at a shareholders' meeting (unless the bylaws require a higher quorum).
95%	The bylaws may expressly authorize the controlling shareholder who has acquired 95% of the shares to force all other shareholders to sell their shares (a "**squeeze-out**").

3.2 Restrictions and careful planning

Chilean law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company and prior due diligence by a candidate bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a candidate bidder or target company intends to start a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. The rules include, amongst other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Generally, any person or entity who directly or indirectly owns 10% or more of the share capital of a listed company, or acquires such percentage, is required to make a public disclosure and inform the Commission, and each stock exchange in Chile on which the company has listed its shares, of all acquisitions and transfers of shares of the company they make. They are also required to disclose if such an acquisition has been made with the intention to acquire control over the company or, otherwise, if the acquisition is only a financial investment. Lastly, such shareholders are also required to disclose any transaction involving agreements or securities in which the transaction price or result depends or is significantly conditioned by the variation or evolution of the price of the shares of the company.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately disclose all material information. For further information on material information disclosure, see 6.1 below.

The facts surrounding the preparation of a public takeover bid may constitute material information if it is known by the target company. If so, the target company must communicate this to the Commission. However, the board of the target company can communicate this material information to the Commission on a confidential basis if it believes that a disclosure would affect the transaction or would otherwise affect the interest of the company. This could, for instance, be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid.

Notwithstanding the above, it may be the case that the target company does not know about a shareholder or third party's intention to launch a tender offer, in which case no disclosures need to be made to the Commission or the public before the offer is launched.

3.6 Early disclosures

Unless the bidder (and the controlling shareholder in case of a negotiated transaction) is subject to the supervision of the Commission, it would not be required to disclose to the Commission and/or the market its intention to launch a tender offer or the fact that negotiations with respect to a potential tender offer are taking place until the date the bidder initiates the tender offer process. However, in the event the bidder (or the controlling shareholder) is under the supervision of the Commission, e.g., by being a listed entity, then the bidder (and/or the controlling shareholder) would be obligated to make the proper disclosures to the Commission.

The Commission has the right to require mandatory disclosure in limited cases, typically based on leaks and unusual movement of shares price.

3.7 Due diligence

Neither the Securities Act nor the Corporations Act contain specific rules regarding the question of whether or not a prior due diligence can be organized, nor how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted by the market and the Commission, and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms. However, as listed companies are regulated and a substantial amount of information about them is publicly available, due diligence in the case of listed entities is usually more limited than that of privately held companies.

Members of the board of directors and officers of the target company have a legal duty to abstain from disclosing any information with respect to the business of the target company, and the target company in general, that they may have access to based on their position and that has not been officially disclosed by the target company. In relation to this, we note that the following information has to be officially disclosed by any listed company and therefore would qualify as public information: (a) financial statements that have been previously reported to the Commission (on a quarterly basis); (b) Material Facts (*Hechos Esenciales*) that have been reported as required by applicable law; (c) annual reports of the target company; (d) any information that has been disclosed as "Information of Interest" on the website of the target company; and (e) any other information that has been disclosed or delivered to the authorities based on laws and regulations applicable to listed companies, such as the bylaws and articles of incorporation of the target company and minutes of shareholders' meetings.

In order for a bidder to conduct due diligence on the non-public information of the target company, the board of the target company has to approve the disclosure of information and adopt the necessary measures to maintain the confidentiality of such information. Generally, shareholders of a listed company (whether controlling or not) do not have the right to access the non-public information of a listed company. Therefore, even in the case where negotiations are being conducted between the controlling shareholder and the potential bidder, the board has to approve the disclosure of information for due diligence purposes.

3.8 Usual structure

Generally, listed company takeovers in Chile are the result of negotiations between the prospective bidder and the controlling shareholder(s) of the target company. The process generally involves (i) private meetings and discussions between the controlling shareholder and a potential bidder; (ii) execution of a confidentiality agreement; (iii) delivery of public information to the potential bidder; (iv) a non-binding offer from the potential bidder to the controlling shareholder (or binding offer subject to adjustment based on a due diligence); (v) signing of a Letter of Intent or Agreement to Tender (in both cases being the price subject to determination or adjustment, as applicable, based on a due diligence); and (vi) launching of a tender offer.

The involvement of the board of the target company before the launching of the tender offer, if any, will depend on the stage in which non-public information is requested for due diligence purposes.

3.9 Agreement to tender

Usually the transaction involves the signing of an Agreement to Tender which in public M&A transactions takes the place of a Share Purchase Agreement used in private M&A transactions. The Agreement to Tender is executed by the controlling shareholder(s) and the bidder, pursuant to which the bidder agrees to commence a tender offer to acquire all the issued and outstanding shares of the target company, and the controlling shareholder agrees to tender all of the target company's shares owned by it.

3.10 Publicity

As referred to above, and assuming that neither the controlling shareholder nor the bidder are listed companies in Chile, the transaction may become public or may be communicated to the Commission at various different stages in the process. Listed below are the most common ones:

- At the start of the negotiations, when the controlling shareholder communicates to the board of the target company that it intends to sell its stake and requests them to deliver non-public information for due diligence by the prospective bidder. In this case, the board may agree to (i) communicate the Commission and the general public that the board has become aware of the transaction; or (ii) make the Commission aware of the transaction on a confidential basis, in which case the agreement of three-quarters of the members of the board will be needed.
- After an Agreement to Tender or Letter of Intent has been entered into.
- If no binding document has been entered into, once the offer is published according to 4.3 below.

Notwithstanding the above, the bidder or the controlling shareholder may, at any time, inform the public about the transaction by any means they deem appropriate.

4. Effecting a Takeover

4.1 General rules

There are three main forms of takeover bids in Chile:

(a) a voluntary takeover bid - A bidder voluntarily makes a tender offer for all or part of the shares issued by the target company (and securities issued by the company conferring the right to acquire shares of the target company);

(b) a mandatory takeover bid - The Securities Act requires that any acquisition of shares, whether direct or indirect, allowing the purchaser to obtain control of a listed company must be made through a tender offer in accordance with and subject to the tender offer rules included in the Securities Act (see 4.3).

There are five exemptions from the obligation to conduct a mandatory tender offer, namely:

- control obtained by subscribing for newly issued shares of the target company;
- acquisition of shares transferred by the controller of the target company in circumstances where (i) the shares have "market presence" (i.e., meet certain minimum trading thresholds); (ii) the price is payable in cash; and (iii) the price is not "substantially" higher than "market price" (currently, this means not more than a 10% premium over market average price).
- acquisitions that result from a merger;
- acquisitions that are a result of inheritance; and
- acquisitions resulting from judicial non-voluntary enforcement.

Other kinds of mandatory bids include the following:

- if, after an acquisition, the controlling shareholder reaches a two-thirds voting stake in the target company, it must launch a tender offer for the remaining shares; and
- if an individual or entity intends to take control over a company which in turn controls a listed company that represents more than 75% of its consolidated assets, the offeror must first launch a tender offer for the shares of the listed company for a number of shares that allows the bidder to take control over that entity; and

(c) a squeeze-out bid - A shareholder who has reached a 95% stake in the target company after a voluntary or mandatory tender offer can squeeze-out the remaining holders of shares. However, this right is subject to other specific requirements and may only be exercised by the controlling shareholder if the bylaws of the target company expressly authorize it.

Both mandatory and voluntary tender offers are subject to the same rules. Squeeze-out bids, in turn, are subject to more simple rules, given their nature.

4.2 Control

Under the Securities Act, an individual or entity, or group of individuals and/or entities with a collaboration agreement (acting in concert), would be considered to be controllers of a company if they, directly or indirectly through other individuals or entities, own shares issued by such company and have the power to (i) secure the majority of votes in shareholders' meetings and elect the majority of the members of the board, or (ii) decisively influence the administration of the company.

4.3 The tender offer process

(a) Tender offer commencement publications

One day before the commencement of the validity of the tender offer, the offeror must publish a "highlighted" tombstone advertisement in at least two national newspapers announcing that a tender offer is being launched ("**Tender Offer Commencement Publications**"). At this point the tender offer becomes public. These Tender Offer Commencement Publications must include the essential elements of the tender offer so that any recipient, i.e., any existing shareholder, may correctly understand the terms of the tender offer.

The tender offer itself must have a validity term which cannot be shorter than 20 days nor longer than 30 days. However, in the event the shares are registered with securities depositaries, the term must be 30 days. Nevertheless, the tender offer term can be extended one time only for a minimum of five and a maximum of 15 additional days.

After the Tender Offer Commencement Publications are made, certain restrictions apply to the administration of the target company. For example, the company is precluded from selling relevant assets, redeeming shares, incorporating subsidiaries and increasing its indebtedness by more than 10%. Additionally, the target company is required to provide an updated shareholders' list to the offeror or bidder, and the directors of the company must issue an independent opinion on the convenience of the tender offer for the shareholders.

(b) Prospectus

The bidder is required to prepare and deliver a prospectus to the Commission, the stock exchanges and the target company on the same date the Tender Offer Commencement Publications are made. The prospectus must contain the terms and conditions of the tender offer and should be available to the shareholders of the target from the date the tender offer begins and throughout the entire period the offer is open.

The following information must be included in the prospectus:

- the shares and securities to which the tender offer relates, including the minimum number or percentage of shares required for the tender offer to be successful. The tender offer may be directed to obtain all or part of the shares, with no statutory minimum, except for the case in which the tender offer is launched for the shares of the subsidiary of a company in which the offeror intends to take control, in which case the offer must be for a number of shares that allows the bidder to take control over the company. If the maximum percentage is reached, then the bidder will acquire such number of shares from all shareholders who tendered their shares on a pro rata basis;
- price and payment conditions;
- the terms and sources of financing of the tender offer by the offeror. In case the bidder has obtained loans or capital contributions for these purposes it shall provide the necessary documents to evidence that it has or will have the funds required for the acquisition;
- any potential guarantees that may be offered in order to secure the seriousness of the offer; and
- any conditions that may trigger the revocation of the offer.

(c) General terms and conditions applicable to a tender offer

The tender offer is irrevocable for the bidder. However, the offer itself may contain objective conditions that may trigger the right to revoke it. Such conditions must be included in both the Tender Offer Commencement Publications and the prospectus and normally refer to material adverse changes.

In contrast to the bidder, acceptance by the shareholders may be retracted at any time during the term of the tender offer. This is especially important in the event a competing tender offer is launched at a higher price.

(d) Publication of the results of the tender offer

On the third day after the end of the tender offer period, the offeror must publish the result of the tender offer in the same newspapers on which the Tender Offer Commencement Publications were made. If the publications are not made in time, the shareholders will have the right to withdraw their acceptance. In any case, the results cannot be published later than 15 days after the end of the tender offer period.

4.4 Price and payment conditions

The price must be determined and may be paid in cash or publicly offered securities. It may also be increased during the offer period, which may be necessary, e.g., if a competing bid is made. Generally, there is no minimum or maximum price. An exception to this is in the case of a mandatory tender offer where, after the acquisition, the controlling shareholder reaches a two- thirds voting stake in the target company. In this case, the price should not be lower than the price to be paid to dissenting shareholders who exercised withdrawal rights in case those rights were triggered.

If, during the term within the 30 days prior the commencement of the tender offer and the 90 days after the publication of the notice of results, the bidder has directly or indirectly acquired or acquires shares subject to the tender offer in a higher price than the one offered during the tender offer, the shareholders who sold their shares to the bidder before or during the tender offer have the right to require the bidder to pay them the difference and match the highest price paid. Therefore, in case the price of the tender offer was higher, the shareholders who sold before the tender offer have the right to require the difference. Likewise, if the bidder acquires additional shares, at a price higher than the one paid at the tender offer, within the ninety-day period running from the publication of the results of the tender offer, the shareholders who tendered their shares would be entitled to claim the corresponding price difference.

4.5 Competitive bids

During the term of a tender offer, other offers may be launched. These competitive offers will be subject to the same rules applicable to the original bid. However, they will only be valid in case their respective Tender Offer Commencement Publications are published no later than 10 days before the end of the term of the original tender offer.

If the original tender offer is being conducted in a stock exchange, the competitive bids must be conducted under the same procedure and end on the same date. If the original tender offer has not been made in a stock exchange, the competitive bids may have a different end date. Notwithstanding the above, in both cases (in or outside a stock exchange), if the term of the original tender offer is extended, the competitive bids may only be extended in a way that their end date is the same as the new end date of the original tender offer.

Individuals or entities that are bidders in one of the competitive or original tender offers may not tender their own shares in the other offers.

5. Timeline

The table below contains a summarized overview of the main steps of a typical public takeover bid under Chilean law, assuming a 30-day term of the tender offer.

Day	Action
-	Various actions and activities must be complied with before the Tender Offer Commencement Publications are made, including, among others: (i) execution of an Agreement to Tender with the controlling shareholder; (ii) defining and implementing a tax and corporate structure in order to consummate the acquisition; (iii) execution of an agreement between the bidder and one or more investment banks or broker dealers that shall act as the administrator of the offer; (iv) obtaining and organizing all relevant information required to be disclosed in the prospectus, including detailed corporate, legal and business information of the offeror, its related companies and ultimate controllers; and (v) preparing all the various documents and forms of contracts involved in the tender offer, including, among others, the Tender Offer Commencement Publications, the prospectus and the forms of purchase agreements and transfer deeds to be executed by each shareholder tendering its shares.
1	Tender Offer Commencement Publications and delivery of prospectus to the Commission, stock exchanges and target company.
2	Commencement or initial effective date of tender offer.
7	Each director of the target company prepares a written report with respect to the convenience or inconvenience of accepting the tender offer. The report must be delivered to the Commission, the stock exchanges, the offeror and the administrator of the tender offer.
31	Final effective day of the tender offer.
34	Public notice disclosing the results of the tender offer.
34	Closing and closing date.
35	Payment of purchase price.

This timeline may be altered in case of extension or other amendments made to the bid, such as increase in the price, which may occur, for example, in case a competing offer is launched.

Set out below is an overview of the main steps for a tender offer in Chile.

Tender offer (indicative timeline)

Start process	
Day 0	Announcement of tender offer in two national newspapers Delivery of prospectus to the Financial Market Commission, stock exchanges and target
Day 1	Initial effective date of tender offer
Day 6	Presentation of directors' report on the convenience of accepting the offer (reports cannot be delivered later than 5 business days after the initial announcement of the tender offer) Report must be delivered to the Financial Market Commission, stock exchanges, offeror, and administrator of tender offer
Day 30	Final effective day of the tender offer
Day 33	Closing date Offeror publishes results of tender offer in national newspapers (results cannot be published later than 15 days after end of tender offer period)
Day 34	Payment of purchase price

6. Takeover Tactics

6.1 Material information

A Chilean listed company is required to immediately disclose to the public all material information that relates to it and the securities it offers, including all material changes in information that has already been disclosed to the public. Under the Securities Act, "material information" is all the information that a wise man (*hombre juicioso*) would consider important for their investment decisions.

It is up to the company to determine if certain information qualifies as "material information". This may be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

The intention of the controlling shareholder to sell its stake in a listed company and/or the existence of negotiations oriented to the acquisition of a listed company qualifies as material information for the target company and therefore has to be disclosed as a Material Fact (*Hecho Esencial*). Thus, in the event that the target company becomes aware of that information either through its board of directors or through its CEO as legal representative of the target company, the target company would be required to report the material information to the Commission and the stock exchanges. The target company may provide the material information to the Commission on a confidential basis as a Reserved Fact (*Hecho Reservado*) if at least three-quarters of the board of directors of the target company vote to approve this. This may be because negotiations are ongoing and because public disclosure may adversely affect the best interests of the target company.

As stated before, to the extent they are not listed companies themselves, neither the controlling shareholder nor the potential bidder are obligated to disclose their intentions or negotiations until the Tender Offer Commencement Publications are made.

6.2 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Chilean law is set forth in the Securities Act.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.3 Common anti-takeover defense mechanisms

After the tender offer publications are made, certain restrictions apply to the administration of the target company. The company is precluded from selling relevant assets, redeeming shares, incorporating subsidiaries, and increasing its indebtedness by more than 10%.

Other common takeover defense mechanisms, such as increasing the capital without providing preferential subscription rights to the existing shareholders or issuing warrants prior to the takeover bid in favor of "friendly person(s)" (without providing preferential subscription rights to the shareholders), are not allowed, given that there must be pre-emptive right for subscription of newly issued shares in favor of all shareholders.

The table below contains a summarized overview of the mechanisms that we understand are commonly used by target companies in other jurisdictions as a defense against a takeover bid, explaining whether they could be adopted in Chile or not. These take into account the restrictions that apply to the board and shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. **Capital increase, veto rights, maximum concentration of shareholdings and other similar restrictions (poison pills)**	- All these actions would require an amendment to the bylaws of the company and therefore the affirmative vote of more than 50% or two- thirds, as applicable, of the shares of the company at an extraordinary shareholders' meeting specially convened for said purpose. - In addition, the completion of all these actions would normally require more than the standard 30-day period for tender offers.
2. **Share buyback** Share buyback "with a view to avoid imminent and serious harm" to the company.	- Expressly forbidden under the Tender Offer Rules.
3. **Sale of crown jewels** An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a takeover bid.	- Expressly forbidden under the Tender Offer Rules.
4. **Cross shareholdings** Acquisition of shares in the potential bidder prohibits a bidder from holding shares in a target.	- Any cross shareholdings between two companies are prohibited (even indirectly through other entities). However, this defense may not be very effective given that if a cross shareholding occurs the transaction is not automatically voided, as the situation is required to be remedied within a year. - The acquisition of voting shares in the bidder may need to be disclosed pursuant to applicable transparency rules. - Requires sufficient means to finance the acquisition.
5. **Frustrating actions** Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	- Expressly forbidden under the Tender Offer Rules.

Mechanism	Assessment and considerations
6. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	- Allowed. - Disclosure obligations may apply if all participants jointly own more than 10%, and advance disclosure informing their intention to obtain control will also be necessary in case participant shareholders acting jointly would acquire control of the company

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

The minority shareholders of a listed company in which a controlling shareholder acquires more than 95% of the shares of that company will have withdrawal rights, i.e., the right to sell their shares to the company at market value (or book value in case the shares of the company are not sufficiently traded), within 30 days after the bidder has reached 95% of the shares.

The bylaws of a listed company may authorize that, following a tender offer, if the bidder (together with the persons with whom it acts in concert) holds 95% of the share capital, all other shareholders can be forced to transfer their shares to the bidder at the price offered in the takeover bid, provided that the bidder acquired, via the acceptance of a takeover bid launched for the acquisition of 100% of the shares, at least 15% of the share capital from shareholders that are not related to the bidder.

The price for the shares will be the same as that offered in the tender offer, duly adjusted (for inflation purposes) plus ordinary interest (average interest paid by banks and financial institutions in similar amount operations).

This squeeze-out right may be exercised by the bidder within 15 days after the end of the term to exercise the withdrawal rights referred to above, by means of a certified letter sent to each shareholder and a "highlighted" advertisement in a national newspaper and on the webpage of the target company, if applicable.

The purchase of the shares will be completed 15 days after the exercise of the squeeze-out rights is notified to the shareholders, without the need to sign any document. The target company will register the shares under the controlling shareholder's name and immediately make the price paid for the shares available to the squeezed-out shareholders.

7.2 Restrictions on acquiring securities after acquiring control

During a period of 12 months after a shareholder has taken control of the target company by any means, such controlling shareholder cannot directly or indirectly acquire any shares of the target company for an amount equal to or higher than 3% of the stock capital of its shares without launching a tender offer. The price per share offered in the tender offer may not be lower than the price paid in the operation that allowed the shareholder to take control of the target company.

8. Delisting

The delisting of listed entities in Chile is subject to the approval of two- thirds of the issued voting shares of the company. This decision triggers withdrawal rights to the dissenting shareholders.

In order for the delisting decision to be valid, the company must not have had 2,000 (or a higher number determined by the Commission) or more shareholders during the 12 consecutive months before the delisting is approved.

The company has to request the Commission to be delisted, which will approve it if all the requirements have been met.

9. Contacts within Baker McKenzie

Jaime Munro, Fernando Castro and Cristóbal Larrain in the Santiago office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Chile.

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Colombia

1. Overview

M&A activity in Colombia in 2024 reflected the political uncertainties and mixed economic signals that continue to affect the market. Following the 2022 presidential elections, concerns emerged over proposed reforms in tax, labor, healthcare and pensions systems. However, the private sector has gradually adapted to these changes and learned to better navigate the current administration's mixed messages. Consequently, investment has continued, albeit at a moderate pace.

As of December 2024, direct foreign investment in Colombia reached US$10.81 billion, evidencing a decrease of 17.6% compared to the same period in 2023. While this marks a slowdown in inflows, improving macroeconomic conditions, lower inflation and declining interest rates have helped sustain domestic demand and investment activity.

Colombia closed 2024 with the fourth highest volume of M&A deals in Latin America. A total of 161 M&A transactions were registered in 2024, representing an 18% increase compared to 2023. Furthermore, the reported value also showed a 32% increase in 2024 compared to 2023, closing at more than US$5.9 billion.

In a Latin American landscape where M&A activity has dropped by 20%, Colombia has shown resilience, especially in high-growth industries like software, banking and IT services. The industries with the highest number of deals in the year were industry specific software, followed by banking and investment, internet and retail.

Traditionally, transactions between private companies have prevailed in the Colombian M&A market, however, transactions involving public companies tend to be larger and more visible than even the largest private deals.

The largest deals in 2023 and 2024 were:

- Grupo Calleja, a Salvadoran retail company, acquired 86.84% of Grupo Éxito, one of Colombia's main retailers, for around US$1 billion. The acquisition was made through a Public Acquisition Offer (OPA) in Colombia and the United States.
- Rhenus Group, an international logistics service provider, acquired Blu Logistics Latam, a leading cargo transportation company with a significant footprint across Latin America.
- The sale by global pharmaceutical company Sanofi of Genfar, its generic business in Colombia, Ecuador and Peru, to Eurofarma Laboratorios S.A. for around US$316 million.
- The Gilinski Group and IHC completed their acquisition of Grupo Nutresa S.A. (one of Colombia's main food processing companies).

2. General Legal Framework

2.1 Main legal framework

Public takeovers are primarily regulated by the following regulations:

- Law 964/2005 is the framework law of the public securities market, comprising the general statute in which the Colombian congress sets out the general principles, objectives and criteria for the government to regulate the Colombian securities market. It grants overall regulation and supervision over the Colombian securities market to the Colombian Superintendence of Finance (*Superintendencia Financiera de Colombia* or "**SFC**").

- Decree 2555/2010 is an all-encompassing regulation that, among many other topics, regulates public takeovers, whether by tender offer, reorganization process, or other means (section 6.15.2.1.1 and following).
- The operational and procedural requirements of public tender offers are set forth in Chapter 3 of the General Regulations (*Reglamento General*) issued by the Colombian Stock Exchange (*Bolsa de Valores de Colombia* or "**BVC**").
- Colombian antitrust and competition rules, such as Law 155/1959, Law 1340/2009 and Decree 2153/1992 (among others), are relevant if antitrust clearance is required as a condition for obtaining control of the target company.

2.2 The regulatory authorities

The following authorities regulate public takeovers:

- The SFC is the national authority, linked to the Colombian Ministry of Finance and Public Credit, and is responsible for the regulation and supervision of the financial sector (banks and insurance companies) and the capital markets (issuers, intermediaries, brokers and stock exchanges).
- The BVC is the Colombian securities exchange, which operates the trading platforms for equities, fixed income and standard derivatives securities. The BVC and its affiliates handle the entire value chain of the capital markets, from securities trading to custody and depository services.
- The Superintendence of Industry and Commerce (*Superintendencia de Industria y Comercio* or "**SIC**") is the antitrust authority of Colombia. It is responsible for preventing restrictive trade practices and unfair competition and is also in charge of the general antitrust clearance regime for Colombian mergers and acquisitions.

2.3 General principles

In Colombia, the decision to sell shares of public companies lies exclusively with the shareholders. The management of the target does not play a formal role in the process. Therefore, the traditional distinction between hostile bids (that is, those bids that occur without the consent of the management of the target, but by directly approaching the target's shareholders) and recommended bids is not applicable.

Bids that occur without the prior agreement of the target company's shareholders are allowed, but are uncommon for the following reasons:

(a) A bidder who has not reached an agreement with the controlling shareholder will not have access to information that is not in the public domain.

(b) A shareholder cannot be compelled to sell its shares and can simply abstain from accepting a public tender offer.

Takeover bids in Colombia allow third parties (that is, parties that have not reached an agreement with the controlling shareholders) the opportunity to submit competing bids against a public tender offer that has been launched by a bidder whether or not it has reached an agreement with the controlling shareholder. In practice, competing bids are rare because, whenever there is a previous arrangement with the controlling shareholder, the third-party bidders will be in a disadvantaged position in terms of access to information regarding the target.

Any person or group of persons that have the same "beneficial owner" may only acquire, directly or indirectly, shares representing 25% or more of the issued and outstanding shares of a public company in Colombia through a mandatory tender offer (*oferta pública de adquisición*, or "**OPA**"). Anyone who already owns 25% or more of the shares of a public company in Colombia can only increase its shareholding by more than 5% through an OPA. Mandatory tender offer rules aim to ensure that all shareholders have the opportunity of receiving the same treatment afforded to the controlling shareholders.

An OPA will also be required whenever a public company intends to delist the shares from a Colombian stock exchange if the decision is not approved unanimously by the shareholders of the company.

Certain events are exempt from OPAs. Among these exemptions are: transactions unanimously approved by the public company's shareholders, transactions between entities controlled by the same beneficial owner, privatization processes, stock buybacks, issuance of new shares, capitalization of receivables, transfer of shares resulting from donations, successions, court orders, companies' liquidation processes, liquidation of conjugal partnership and payments in kind.

Under current regulations, "prearranged transactions", (i.e., transactions referring to shares listed on a stock exchange in which the terms and conditions are not the result of open market transaction but of direct negotiations between the parties), are considered to be contrary to the securities regulations, unless they are disclosed to the SFC, the BVC and the market at least one month before the date on which they are to be completed. The parties must disclose the main terms and conditions as well as the date and time when the transaction will take place. A prearranged acquisition of shares of a listed company shall be done through the BVC's platforms. In those cases where a tender offer refers to anything less than 100% of the issued and outstanding shares of the public company, the shareholders with whom an agreement has been reached may not be able to dispose of all the shares that they intended to sell because the remaining shareholders will have the right to sell proportionally to their interest. Conversely, it could mean that, to assure the selling shareholders that they will dispose of all the shares they intend to sell, the bidder may be willing to offer to buy more shares than it needs. This is because, in those cases where the shares tendered exceed demand, shares are allocated proportionally among the relevant sellers.

If the shares representing 25% or more of the target company (or representing more than 5% in the case of a purchaser who already owns 25% or more) are acquired as a result of a merger or a corporate reorganization process, an ex-post tender offer would have to be launched within the three months following the transaction, unless the purchaser divests the relevant shares within the three months following the merger or the corporate reorganization process. The tender offer would have to refer to a percentage of shares of the target equal to those that were directly or indirectly acquired by way of the merger or the corporate reorganization process (or the balance in case the percentage acquired by way of merger is greater than 50%) at a minimum price to be established in an independent valuation, as described in Section 4.4 below.

Minority shareholders owning at least 1% of the shares of a listed company may request the owner of more than 90% of the shares of a public company to launch a tender offer for all the shares of the company if such 90% threshold was reached without a tender offer. In this case, the OPA would have to be launched within the three months following the date on which the 90% threshold was exceeded.

A person may carry out a tender offer, even if not legally required to, for at least 5% of the shares of a public company, and will be subject to the same rules set out for OPAs.

2.4 Foreign Investment Restrictions

Foreign investments in Colombia are permitted in all areas of the economy except for activities related to defense and national security, and the processing and disposal of toxic, dangerous or radioactive waste not generated in the country. A Colombian company can be 100% foreign-owned, except for national broadcast television companies, which may only be 40% foreign-owned.

Under the Colombian Constitution and foreign investment regulations, a foreign investor shall receive the same treatment as a local investor. The conditions for reimbursement of foreign investment and remittance of profits in effect at the time the investment is registered may not be changed to affect foreign investment adversely, except in the case of an extraordinary event in which international reserves are lower than the value of three months of imports.

Foreign investments in Colombia do not require prior government approval but the relevant funds must be transacted through exchange market intermediaries, or a clearing account and registered before the Central Bank. For this purpose, a foreign exchange declaration (*declaración de cambio*) for international investments must be filed. The registration of foreign investment guarantees the foreign investor access to the foreign exchange market to purchase convertible currency to remit dividends and repatriate the investment. The failure to report or register could result in the imposition of fines by pertinent authorities and require the investor to rely on the informal exchange market for access to convertible currency.

Colombia has exchange controls, but these are benign.

All foreign currency for the operations listed below must be acquired or handled through 'exchange market intermediaries', i.e., Colombian banks, some financial institutions and exchange houses, or by using overseas registered clearing accounts known as 'compensation' accounts:

(a) import and export of goods;

(b) foreign loans and earnings related thereto;

(c) foreign investment in Colombia and related earnings;

(d) Colombian investment abroad and related earnings;

(e) financial investments in securities issued or assets located abroad and earnings related to them, except when investment is made with currency originating from 'free market' operations (i.e., operations that are not required to be made through the exchange market);

(f) guarantees in foreign currency; and

(g) derivatives.

All other foreign currency operations may be made through the exchange market or the free market. In general, Colombian regulations do not allow the set-off of the payment obligations resulting from these transactions.

Unless the law specifically permits otherwise, the general rule is that payments between Colombian companies or individuals must be made in Colombian pesos, or through clearing accounts.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that come with the different levels of shareholding within a Colombian public company:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings. • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons. • In case of a merger or de-merger, if dissenting or absent from the relevant shareholders' meeting, the right to request that its shares be acquired by assenting shareholders or redeemed by the company. • The ability to block special resolutions at a general shareholders' meeting: (a) "asymmetrical splits"; (b) waivers of public tender offers; and (c) approval of resolutions by unanimous written consent.
1%	The right to request that a mandatory tender offer be carried out by the owner of more than 90% of the shares of the relevant listed company, if this threshold was reached by means other than a tender offer for all of the shares in the company.
More than 22% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block any decision to withhold payment of dividends below legal limit (50% of distributable profits).
More than 30% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders.
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting: • to appoint a majority of directors;

Shareholding	Rights
	- to appoint and dismiss statutory auditors and to approve their remuneration; - to approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors); and - to take decisions for which no special majority is required.

3.2 Public domain information

In Colombia, public companies are required to provide two main types of information to the market through the SFC and the BVC:

(a) **General or periodic information** – This is comprised of annual and quarterly information. Annual information must contain, at the very minimum, the information that a company is required to provide to its shareholders at the annual meeting (financial statements, management and auditor reports and proposed dividends, among other matters). Quarterly information is mostly comprised of financial statements.

(b) **Special or "material" information** – This is comprised of any and all facts and events relating to the listed company, its business, assets or the shares themselves that would have been considered by a diligent expert when deciding to purchase, sell or maintain its shares in the target company or that the diligent expert would have considered when deciding how to vote such shares. This type of information must be disclosed to the market as soon as possible after the company becomes aware of it.

3.3 Pre-bid due diligence

Access to the information required by the bidder to perform financial and legal due diligence (analogous to the review that would be undertaken in the acquisition of a private company) may be allowed by the management of the company subject to non-disclosure agreements. The information that shareholders have the right to access directly, regardless of the size of their stake and whether they control the target, is limited to the financial statements, main accounting books and minute books only 15 days before the annual meeting. Therefore, the controlling shareholders must persuade (or otherwise prevail over) the management to make the information available to the bidder.

The bidder will be able to request and review the same type of information regarding the target as if the target were a privately held company, provided that the target has complied with its obligation to report all "material corporate events" (*información eventual*) that may be reflected in the information that the purchaser is given access to.

Under a more conservative approach, the bidder may want to limit its access to any relevant information that qualifies as "reserved information" until after the board of directors of the target has authorized the management of the target to disclose such reserved information to the bidder.

If management of the target company is not aligned with the controlling shareholder's intention of facilitating a sale to a bidder (which would be extremely rare, except in the case of a competing takeover bid), the bidder would only have access to information that is in the public domain.

There are no specific rules that require secrecy prior to the announcement of the bid. Managers are, however, subject to general rules regarding the use of privileged information and insider trading. The target company must disclose the existence of a binding agreement regarding the sale of the shares, as special or material information, as soon as its management learns of its existence. Prospective buyers and sellers are also subject to the same obligation if they, themselves, are listed at BVC.

3.4 Documentation

As prearranged transactions result from direct negotiations between the parties and not from open market transactions, they will only be valid if disclosed to the SFC, the BVC and the market in general at least one month before the date on which they are to be completed in order to give third parties the chance to prepare and submit a competing offer. As a rule, the acquisition of shares of a public company can only take place through the BVC platforms. Therefore, the agreement that establishes the agreed terms of the transaction does not actually transfer title to the shares. The scope of the agreement will be limited to:

(a) A commitment by the bidder to launch a public tender offer in the pre-agreed terms and conditions;

(b) A commitment by the seller to accept the public tender offer in the pre-agreed terms and conditions; and

(c) Securing the relevant approvals under the SFC and BVC regulations and, if applicable, subject to an antitrust clearance.

The above, does not prevent the parties from including customary clauses, such as representations and warranties from the sellers regarding the shares and the target, relevant indemnification obligations or additional covenants and conditions.

3.5 Antitrust clearance

In accordance with Colombian Competition Law, an integration occurs whenever two or more businesses join by any legal means, thus terminating competition between them. Antitrust clearance is required if the transaction involves all the following elements:

(a) **Acquisition of Competitive Control**: One of the parties to the transaction must acquire 'control' over the business of the other party. For antitrust purposes, 'control' is understood as the mere de facto possibility of influencing strategic decisions, regarding corporate policies (including prices, investments, indebtedness, or similar and business activity).

(b) **Subjective element**: Unrelated parties are engaged in the same business (horizontal overlap) or carry out activities within the same value chain (vertical overlap), directly or indirectly, through other controlled corporate vehicles.

(c) **Objective element**: Turnover or total assets of the parties from the previous fiscal year, individually or combined, exceed the annual thresholds established by the SIC. For operations undertaken in 2025, the thresholds were set at the peso equivalent of the Basic Value Unit (UVB). In Colombia, the UVB is an economic measure detached from the minimum wage and inflation, mostly used to calculate penalties, fees, tariffs, and financial requirements for businesses. So, for antitrust clearance purposes, the UVB for 2025 is COP 11,552, meaning that the peso threshold figure is COP 81,756,652,496, approximately US$19 million.

When the combined market share is below 20%, the parties can apply for an abbreviated notification procedure. In this case, the transaction will be deemed as authorized by filing a mere notification to the SIC.

If the percentage exceeds 20%, the transaction must be expressly cleared by the SIC. The timeframe for clearance depends on the complexity of the competition issues triggered by the transaction, but usually takes from three to six months.

4. Effecting a Takeover

4.1 Means of obtaining control

The main means of obtaining control of a public company in Colombia are:

(a) by acquiring existing shares from current shareholders pursuant to a public tender offer;

(b) subscribing newly issued shares of the public company; or

(c) by upstream mergers – this is less common.

Contests to obtain board control are uncommon, probably because, despite being listed, public companies in Colombia usually have a defined controlling shareholder and therefore that controlling shareholder has appointed the majority of the board and the management.

4.2 Mandatory offer threshold

Public tender offers are mandatory when:

(a) Any person (or group of persons sharing the same beneficial owner) intends to acquire shares representing 25% or more of the voting shares of a public company in Colombia;

(b) Any person (or group of persons sharing the same beneficial owner) who already owns 25% or more of the voting shares of the relevant company intends to increase its voting shares by more than 5%;

(c) Any person (or group of persons sharing the same beneficial owners) acquires voting shares representing 25% or more of the public company as a result of a merger, in Colombia or abroad (in which an "*ex- post*" public tender offer must be launched within three months of the transaction, unless the purchaser divests the relevant shares within three months of the merger);

(d) Any person (or group of persons sharing the same beneficial owner) holds more than 90% of the shares of the public company, if:

    (i) this threshold was reached by other means than a public tender offer for all the shares in the company; and

    (ii) the minority shareholders owning at least 1% of the voting shares of the target company request the launch of a public tender offer (in which case the public tender offer must be launched within three months of the date on which the 90% threshold was exceeded); and

(e) The shareholders of the public company decide to delist the company by a majority shareholder vote (as opposed to a unanimous shareholder vote).

4.3 Requirements

Any public tender offer must comply with a number of requirements. The bidder must file a formal request before the SFC and a notice before the BVC, providing both entities with a draft of the offering memorandum and the notice of its intention to make the public tender offer, which must include:

(a) the name and principal place of business of the target company;

(b) the name, identification, principal place of business, main corporate activity and corporate structure of the bidder (by providing a list of individuals or companies that are subordinated to the bidder or are part of the same business group);

(c) the minimum and maximum number of shares that the bidder will accept (with at least a 20% margin between the two figures);

(d) information on shares that the bidder already has in the target company and any prearranged transactions or other agreements between the bidder and the management of the target company or other shareholders;

(e) the offer price for the shares;

(f) the date by which the offer must be accepted;

(g) settlement terms, form of payment and guarantees;

(h) the name of the exchange broker to be used in the operation;

(i) a brief description of the tax, foreign exchange and foreign investment regimes applicable to the securities offered as payment (if applicable);

(j) information on the methodology used to value the securities offered as payment (if any);

(k) certificates by the bidder and its investment bank on the accuracy of the offering memorandum and information on the authorizations obtained to issue the offer; and

(l) any other information requested by the SFC.

As soon as the above information is filed before the SFC, the BVC will suspend trading of the shares until the day after the publication of the public tender offer notice. The SFC has five business days to provide comments to the documentation.

4.4 Pricing rules

No minimum price rules would apply in a tender offer unless the bidder has purchased shares within three months prior to submitting the request for authorization to the SFC (in which case, the offer cannot be less than the highest price paid during those three months) or if there is an agreement to carry out prearranged transactions (in which case, the price cannot be less than the price set forth in such agreement). Applicable regulations provide that the tender offer notice must clearly indicate either (a) the price at which the shares offered in payment shall be delivered as well as the applicable exchange ratio, i.e., the number of shares delivered in payment for each share to be acquired, or (b) the manner in which the price and the exchange ratio are to be calculated.

If the relevant shares are acquired by way of a merger (or otherwise indirectly, if applicable), the minimum price of the OPA must be determined by an independent valuation performed by a professional firm, engaged by the bidder and approved by the SFC. The price offered for the shares cannot be less than the value assigned for the shares in the merger and may only be paid in cash.

The fact that the price at which the mandatory ex-post tender offer is established by a third party has, in the past, led purchasers to carry out a voluntary ex-post tender offer before the mandatory ex-post tender offer, at the same price per share paid in the direct acquisition, as a way of sweeping up as many shares as possible before the OPA has to be launched.

If the obligation to carry out an OPA is triggered by the decision to delist the shares, the minimum price of the OPA would have to be established by an independent valuation performed by a professional firm, hired and paid for by the public company and approved by the SFC.

If the obligation to carry out an OPA is triggered by the request of minority shareholders (as described in Section 4.2(d) above), the minimum price of the OPA must be determined by an independent valuation performed by a professional firm, engaged by the public company and approved by the SFC.

4.5 Committed funding

Committed funding is required before announcing an offer. The bidder must launch the public tender offer through a brokerage firm and establish a performance guarantee, covering a certain percentage of the value of the transaction. The guarantee can be in the form of a stand-by letter of credit or a bank guarantee, among other options.

4.6 Announcing and making the offer

The public tender offer notice must be posted three times in the finance section of a national newspaper, the first within the five days following the expiration of the SFC's term to make comments to the draft of the public tender offer notice and offering memorandum; the other postings cannot be spaced more than five calendar days apart. The public tender offer notice must also be posted in the official information bulletins issued by the BVC, on each day from the date the public tender offer notice is first published until the day set for acceptances.

Acceptances of the public tender offer must be made on the date set-out in the public tender offer notice, at a special two-and-one half hour round, under an open outcry system. If the number of acceptances meets the minimum number of shares indicated by the bidder, then all acceptances are deemed to be final. If not, the bidder is not required to purchase the shares (but may freely elect to do so).

If more acceptances are received than the maximum offer was made for, then the right to sell shares is allocated proportionally among those who accepted.

Agreements in which one party (the bidder) agrees to launch a public tender offer and another party (the shareholder) commits to accept the public tender offer must be disclosed to the SFC, the BVC and the market in general at least one month before the date on which they are to be perfected. This must include an indication of the main terms and conditions of the exchange or trading system of the transaction as well as the proposed date and time of the transaction.

4.7 Offer conditions

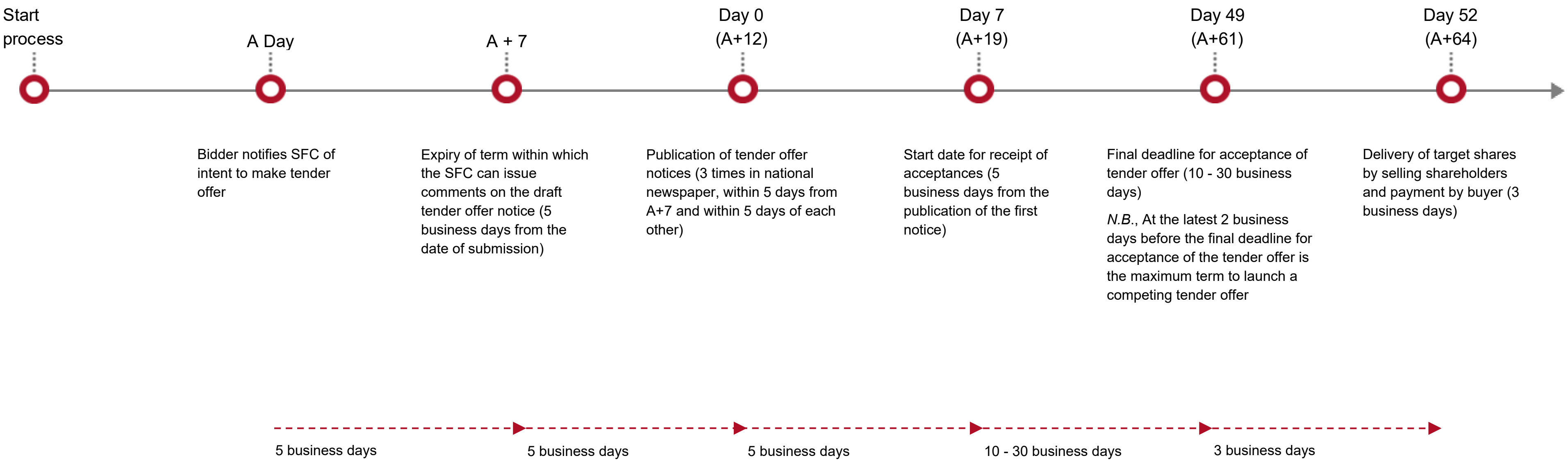
Once a public tender offer is launched, it is irrevocable and cannot be made subject to pre-conditions. However, it is common for the bidder's obligation to launch the tender offer to be subject to the satisfaction of pre- conditions, such as securing antitrust clearance.

In practice, once the offer is launched, the only condition to which the bidder's obligation to purchase the shares can be subject is that the acceptances received shall be at least equal to the minimum number of shares set out in the notice.

5. Timeline

Set out below is an overview of the main steps for a public tender offer in Colombia.

Public tender offer (indicative timeline)



Start process

A Day

Bidder notifies SFC of intent to make tender offer

A + 7

Expiry of term within which the SFC can issue comments on the draft tender offer notice (5 business days from the date of submission)

Day 0 (A+12)

Publication of tender offer notices (3 times in national newspaper, within 5 days from A+7 and within 5 days of each other)

Day 7 (A+19)

Start date for receipt of acceptances (5 business days from the publication of the first notice)

Day 49 (A+61)

Final deadline for acceptance of tender offer (10 - 30 business days)

N.B., At the latest 2 business days before the final deadline for acceptance of the tender offer is the maximum term to launch a competing tender offer

Day 52 (A+64)

Delivery of target shares by selling shareholders and payment by buyer (3 business days)

6. Takeover Tactics

6.1 Stake building

Colombian public companies are required to disclose, as special or material information, the fact that a single person has become the beneficial owner of 5% or more of its voting shares.

No express equivalent obligation exists for non-listed shareholders. In practice, shareholders who hold or intend to hold 5% or more of voting shares (but less than 25%) avoid the disclosure obligations by acting through two or more holding vehicles, none of which exceed the 5% threshold. Some consider such an approach to be aggressive. If the holding vehicles are given discretion on how the shares are to be voted (pursuant to a mandate, a trust, a swap or otherwise) then the shareholder is not considered to be the ultimate beneficial owner and thus no reporting obligations apply, even under the most conservative of approaches.

6.2 Target's response

The decision to sell shares of public companies lies ultimately with the shareholders. If an offer is not agreed to by the shareholders or is otherwise unsolicited, the shareholders can simply choose not to accept it. However, if the shareholders have already accepted a tender offer launched by a particular bidder, and a third party launches a competing public tender offer (which, by definition, must be better than the original offer and must be launched before the period for accepting the original bid has expired), the shareholders would be deemed to have accepted the third party's competing bid.

6.3 Dissenting shareholders' rights

In addition to its right to refuse to sell its shares, a dissenting shareholder has the following rights:

(a) **Disclosure and opportunity to prepare a competing takeover bid** – Takeover bids in Colombia are regulated so that when someone agrees to launch a public tender offer and shareholders commit to accept the public tender offer, all other shareholders are informed about the main aspects of the negotiated offer (main terms and conditions of the exchange or trading system of the transaction as well as the proposed date and time of the transaction), and given the opportunity to prepare a bid to compete with the negotiated public tender offer; and

(b) **Public tender offer in event of delisting** – Although the decision to delist a company's shares simply requires a majority shareholder vote, the shareholders voting in favor of the delisting must carry out a public tender offer addressed to all shareholders that either voted against the delisting or did not attend the shareholders' meeting where the delisting was approved. The public tender offer must be carried out within three months of the shareholders' meeting. The delisting only becomes effective after the public tender offer is completed.

6.4 Break fees

Break fees have been used to require initial selling shareholders to pay amounts to the bidder in the event a third party launches a competing offer and ultimately acquires the relevant shares. The market's view is that break fees are acceptable in principle, if the amounts involved do not hinder the right of selling shareholders to accept competing offers. The SFC has revised agreed break fees to reduce them whenever it considers they are excessive.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

In Colombia, minority shareholders cannot be compelled to sell their shares. Minority shareholders owning at least 1% of the shares of a listed company may request that an OPA be carried out by the owner of more than 90% of the shares of the relevant listed company, if this threshold was reached by means other than a tender offer for all the shares in the company. In this case, the OPA would have to be launched within the three months following the date on which the 90% threshold was exceeded.

8. Delisting

Going-private transactions are extremely rare because the typical Colombian target portfolio company is not listed on the stock exchange.

The decision to delist a company's shares simply requires a majority shareholder vote. However, as mentioned in Section 6.3(b) above, the shareholders voting in favor of the delisting must carry out a public tender offer addressed to all shareholders that either voted against the delisting or did not attend the shareholders' meeting where the delisting was approved. The public tender offer must be carried out within three months of the shareholders' meeting. The delisting only becomes effective after the public tender offer is completed.

9. Contacts within Baker McKenzie

Jaime Trujillo and Andres Crump in the Bogotá office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Colombia.

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Czech Republic

1. Overview

The number of companies with their shares listed on the Prague Stock Exchange ("**PSE**") is not currently large enough to allow any significant public M&A market in the Czech Republic to develop. Accordingly, there is not at present any public M&A activity and all major deals in the M&A sector are private M&A transactions.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Czech law relating to public takeover bids can be found in:

- Czech Act No. 104/2008 Coll. ("**Czech Takeover Bids Act**")
- Czech Act No. 125/2008 Coll. ("**Czech Transformations Act**")
- Czech Act No. 90/2012 Coll. ("**Czech Companies Act**")
- Czech Act No. 256/2004 Coll. ("**Czech Capital Markets Act**")

The main body of the Czech takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in the Czech Republic, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules) under (i) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse ("**Market Abuse Directive**"), which is effective from 3 June 2017, and (ii) Regulation 596/2014 of 16 April 2014 ("**Market Abuse Regulation**"), which is effective from 3 July 2016. The Market Abuse Regulation is directly applicable in the Czech Republic.

(c) The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are set out in the directly applicable Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and related EU legislation.

(d) The general rules on the supervision and control of the financial markets.

(e) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement by the Czech National Bank

Public takeover bids are subject to the supervision and control of the Czech National Bank ("**CNB**"). The CNB is the principal securities regulator in the Czech Republic.

The CNB has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in case of non-compliance.

The CNB also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 General principles

The following general principles apply to public takeovers in the Czech Republic. These rules are based on the Takeover Directive:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must only announce a bid after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2.5 Foreign investments restrictions

Although foreign investments are not directly prohibited in the Czech Republic some restrictions may still apply. So called "significant reporting entities" have an obligation to compile and submit a statement on direct investments in the Czech Republic to the Czech National Bank. This obligation is applicable to a Czech company with a direct foreign investment provided that the amount of the foreign investor's interest in the company's business or the volume of loans granted or received as part of its direct investment in the Czech Republic amounts, at the end of the calendar year, to at least CZK 25,000,000.

On 1 May 2021, Act No. 34/2021 Coll., on the screening of foreign investments ("**FDI Act**") came into effect, drawing on Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union. The FDI Act introduced a complex framework to screen foreign investments in strategic sectors of the Czech economy.

For the purposes of the FDI Act, any person who is not a national of, or does not have its registered office in, an EU Member State, or a person directly or indirectly controlled by such persons, is considered a foreign investor.

A foreign investment means an investment of any kind by a foreign investor to pursue an economic activity in the Czech Republic which enables the foreign investor to effectively control that economic activity.

Effective control of an economic activity is defined as where:

(a) the foreign investor has at least 10% of the voting rights or corresponding control in an entity conducting the economic activity (including the voting rights of persons who are subject to joint management or act in accord with the foreign investor);

(b) the foreign investor or a closely related person is a member of an elected body of an entity conducting the economic activity;

(c) the foreign investor holds the ownership rights to an object through which the economic activity is conducted; or

(d) the foreign investor has another method of control that enables such investor to gain access to information, systems or technologies that are important for the protection of the security of the Czech Republic or for its internal or public order.

The FDI Act requires prior approval by the Ministry of Industry and Trade of the foreign investments into targets engaging in the following activities:

(a) manufacturing, research, development, innovation or supply relating to arms and military equipment;

(b) operation of an element of critical infrastructure, including infrastructure related to energy, water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services or public administration;

(c) administration of an information or a communication system relating to critical information infrastructure, administration of an information system for an essential service, or operation of an essential service; or

(d) manufacturing or development of dual-use items (i.e., items that may be used for both civilian and military purposes) set out in Annex IV of the Council Regulation (EC) No 428/2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

For foreign investments into other sectors, the prior approval of the Ministry is not necessary. However, the Ministry may review the transaction retrospectively within five years after completion if it believes that the investment may endanger the security of the Czech Republic or its internal or public order. In this regard, the Act introduces the option of a voluntary consultation with the ministry to confirm whether the foreign investment may endanger security or internal or public order. Such consultation is, however, mandatory if the target company is a license holder for nationwide radio or television broadcasting or a publisher of periodicals with a minimum print run of 100,000 copies per day.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Czech listed corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to and receive answers from the company at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to submit proposals and counterproposals relating to issues on the agenda of a general shareholders' meeting. • The ability at a general shareholders' meeting to block a decision to merge shares if the shareholder holds at least one share to be merged. • The ability at a general shareholders' meeting to block a decision to change the type of shares to non-voting shares if the shareholder holds at least one share to be changed. • The right to request the nullity of decisions of general shareholders' meetings for conflict with law, bylaws or good morals. • In case of a merger or de-merger, the right to file a liability claim against directors or to request the nullity of the merger or de-merger.
1% of shares in a company having registered share capital over CZK 500 million or 3% of shares in a company having registered share	• The right to put items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda. • The right to request the board of directors to convene a general shareholders' meeting. • The right to request a supervisory board to check performance of duties by the board of directors. • The right to claim damages on behalf of the company against a member of the board of directors or the supervisory board.

Shareholding	Rights
capital over CZK 100 million or 5% of shares	• The right to bring a claim for payment of the issue price on behalf of the company against a shareholder who is in default with payment of such issue price. • The right to represent the company in the proceedings commenced by bringing such claim.
More than 10%	• The ability to block a splitting-up of a joint- stock company with an unequal exchange ratio. • The ability to block a decision to transfer assets of a company to a shareholder.

More than 25% (at a general shareholders' meeting)	• The ability to block a transformation of the company.
	• The ability at a general shareholders' meeting to block the following decisions:
	  • change of type or form of shares;
	  • change of the rights attached to a certain type of shares;
	  • restriction of the transferability of registered shares or book-entry shares;
	  • exclusion of participating securities from trading on a European regulated market;
	  • exclusion or restriction of the preferential right to acquire convertible or preferential bonds;
	  • distribution of profit or other resources to persons other than the shareholders;
	  • exclusion or restriction of the shareholder's preferential right when the registered share capital is being increased by subscription of new shares; and
	  • increase of the registered share capital with in-kind contributions.

More than 33% (one-third)	• The ability to block a decision to provide financial assistance.
	• The ability at a general shareholders' meeting to block following decisions:
	  • an amendment of the bylaws;
	  • those resulting in an amendment of the bylaws;
	  • authorizing the board of directors to increase the registered share capital;

Shareholding	Rights
	• the possibility to set off a pecuniary receivable towards the company against a receivable from the payment of the issue price; • the issuance of convertible or preferential bonds; • liquidating the company; and • distributing the liquidation balance.
More than 50% (at a general shareholders' meeting)	The right to take decisions for which no special majority is required.
90%	The possibility to force all other shareholders to sell their shares (a "**squeeze-out**").

3.2 Restrictions and careful planning

Czech law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder and announcements of a potential takeover bid by a bidder or a target company. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure thresholds in the Czech Republic are 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50% and 75%. The initial threshold in companies with registered share capital over CZK 100 million is 3%. For companies with registered share capital over CZK 500 million, the initial threshold is 1%.

When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements (such as call option agreements).

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules require that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement for serious reasons as long as the public is not misled thereby and the company is able to protect such information. The CNB must be provided with a written explanation of reasons for the delay immediately after the information is disclosed to the public.

3.6 Announcements of a public takeover bid

Prior to the public announcement of the takeover bid upon a notification containing information that there are no reasons for prohibition of such announcement (or a failure to issue a letter of prohibition) by the CNB (see 6.2), no one is permitted to announce the launching of a public takeover bid. This prohibition not only applies to a bidder, but also to the target company (even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.5).

A bidder that intends to announce a public takeover bid must first inform the CNB of its intention and wait for its reaction. If the CNB issues a notification containing information that there are no reasons for the prohibition of such announcement (or if it fails to issue a letter of prohibition), the bidder will announce the takeover bid. If the CNB fails to issue a letter of prohibition, the takeover bid will be announced no sooner than 15 days and no later than 30 days after the bidder notified the CNB. If the CNB issues a notification not prohibiting the announcement, the bid may be announced even sooner (following the notification). The bid may be withdrawn if such possibility is expressly set out in the bid and provided that the CNB, following a prior notice of the intention to withdraw the bid, does not prohibit such withdrawal.

If there are substantiated rumors or leaks that a (potential) bidder intends to launch a public takeover bid, there is a legal obligation to make an announcement or to act in a manner that will give rise to an obligation to make a takeover bid (see 3.7).

3.7 Early disclosures – Put-up or shut-up

(a) Early disclosure demanded by the Czech Takeover Bids Act

If serious fluctuations of the target company's share price occur or if there are rumors or leaks that a bidder intends to launch a takeover bid and it is reasonably foreseeable that such rumors or leaks are connected with the preparation of such takeover bid, the bidder will announce its intention to make a takeover bid or act in a manner that will give rise to an obligation to make a takeover bid. Such information must be provided to the CNB.

(b) Put-up or shut-up

In addition to the foregoing rule, a bidder that has announced its intention to make a takeover bid must publish such bid within 90 days. If the bidder fails to comply with this rule, a 1-year protection period as in 7.3 below will apply, i.e., the bidder and the persons acting in concert with the bidder cannot make another bid aimed at acquiring securities of the same target company unless an obligation to make a takeover bid arises or in a case of a counter-bid.

3.8 Due diligence

Czech public takeover bid rules do not contain specific rules regarding the question of whether or not a prior due diligence can be organized, nor how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted.

3.9 Acting in concert

For the purpose of the Czech takeover bid rules, persons "act in concert":

- if they collaborate with the bidder in order to acquire or execute control of the enterprise of target company, e.g., by coordinated exercise of voting rights; or
- if a person cooperates with the target company in order to frustrate the success of a takeover bid.

Under the Czech Takeover Bids Act, the following persons are deemed to act in concert:

- controlling and controlled entities;
- persons who entered into an agreement relating to the exercise in concert of their voting rights for election of members of bodies of the target company; and
- members of a group of companies.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. For example, this is the case where a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad, and in practice many issues can arise to determine whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 30% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 30% threshold.

4. Effecting a Takeover

There are three main forms of takeover bids in the Czech Republic:

- a voluntary takeover bid, in which a bidder voluntarily makes an offer for the voting securities issued by the target company (and securities issued by the company conferring the right to acquire voting securities of the target company);
- a mandatory takeover bid, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of 30% of the voting securities of the target; and
- a follow-on (squeeze-out) takeover bid, which a bidder is required to make if, as a result of a previous unlimited and unconditional takeover bid, it receives at least a 90% share of the voting rights and the registered share capital of the target company.

A bidder that intends to launch a takeover bid must include a draft offer document in its notice to the CNB and may be asked to provide proof of certain funds as well.

4.1 Voluntary public takeover bid

- The bidder is free to make the takeover bid subject to merger control clearance and subject to prior notice to the CNB and its subsequent reaction.
- The bidder is in principle free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):
- The offered price may be paid in cash, securities or a combination of both.
- There is no minimum price for a voluntary takeover bid.
- If there are different categories of securities, different prices per category can only be due to the characteristics of such categories.
- Any acquisition of securities subject to the takeover bid at a price in excess of the offered price during a period of six months after the end of the takeover bid period will trigger an obligation to pay the difference to holders of securities who tendered their securities in the takeover bid.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) as a result of an acquisition of voting securities, directly or indirectly holds more than 30% of the (actual outstanding) voting securities of the target company.
- The mandatory takeover bid is unconditional.
- The main exceptions to the takeover bid obligation include situations where:
- the stake of at least 30% is acquired as a result of an unconditional and unlimited voluntary takeover bid;
- the stake is acquired as a result of a transfer between members of a group of companies;
- the shareholder does not control the target company (nor as a member of group of persons acting in concert); or
- the stake is acquired within the framework of a corporate merger, provided that the relevant persons were members of one group of companies (or if there was a controlling and a controlled company).
- In terms of the price offered and the form of the consideration, the same rules apply as in case of a voluntary takeover bid. In addition:
- The mandatory offer price must at least equal the highest price paid by the bidder (or any person acting in concert with it) during a period of 12 months preceding the constitution of an obligation to announce the takeover bid. If such price cannot be determined, the offer price must at least equal the weighted average trading price for the securities of the target company on the European regulated market during the last six calendar months prior to the moment giving rise to the public takeover bid obligation.
- The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered if (i) the consideration does not consist of liquid

securities that are admitted to trading on a European regulated market, or (ii) during a term of 12 months prior to the announcement of the mandatory public takeover bid or during the takeover bid period, the bidder (or a person acting in concert) acquired securities connected with at least 5% share in the voting rights of the target company in consideration of a payment in cash (or agreed to make such cash payment).

- The CNB has the power to adjust the consideration in certain cases.

4.3 Follow-on squeeze-out and sell-out right

- Follow-on squeeze-out – if a bidder, as a result of a previous unlimited and unconditional takeover bid, acquires at least a 90% share of the voting rights and the registered share capital of the target company, it has an obligation to make a follow-on squeeze-out bid. Such follow-on bid has to be made to all shareholders of the target company within 30 days after the last day of the previous takeover bid. The duration of the follow-on takeover bid is 90 days. The consideration has to be at least equal to the consideration set out in the previous takeover bid. Rules governing mandatory takeover bids will apply to the follow-on takeover bid as well with certain exceptions.
- Sell-out right if the bidder is not itself launching a squeeze-out – shareholders have a sell-out right if the bidder fulfils the conditions necessary to squeeze out the residual minority shareholders.

5. Timeline

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

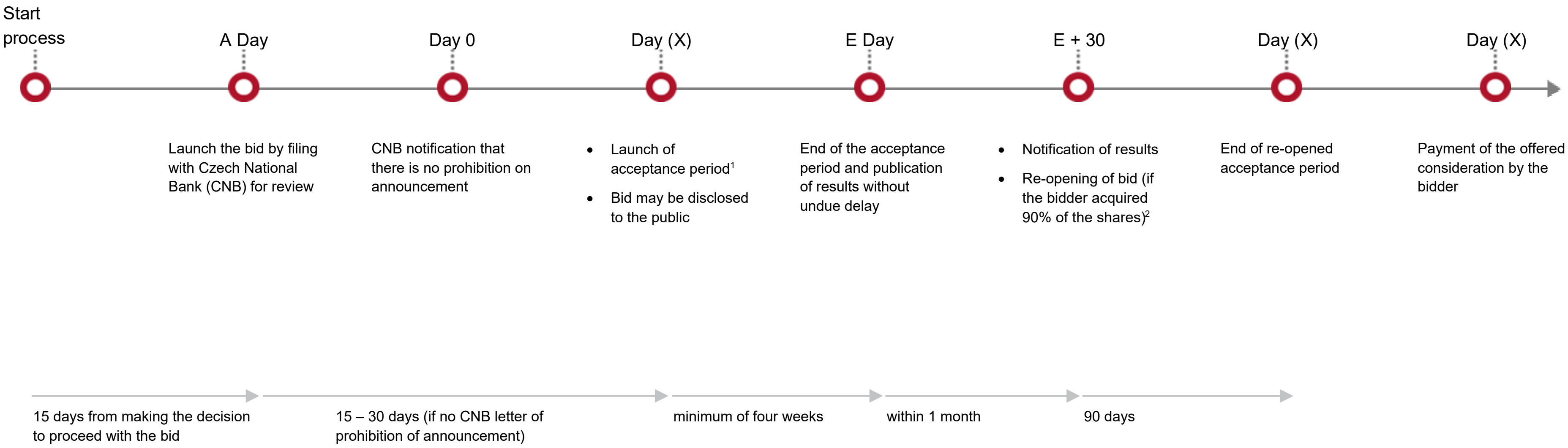
The table below contains a summarized overview of the main steps of a voluntary public takeover bid process under Czech law.

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft offer document). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2.	Launching of the bid: • The bidder files the bid with the CNB. Following the filing, the bidder may be asked to provide proof of certain funds. • Counter-bids can be announced (until five business days prior to the expiry of the acceptance period of the last bid, at the latest; see 6. below).
3.	Review of the bidder's offer document by the CNB and issuance of a notification.

Step	
4.	Consultation of and provision of information to trade unions, the employees' representatives or employees directly by the bidder and the board of directors of the target company.
5.	Response memorandum by the target's board: • The target's board will prepare a response memorandum containing its position on the bid as to compliance with interests of the target, the shareholders, the employees and the creditors. The response memorandum has to be issued within five business days after the receipt of the offer document. • Response memorandum is to be sent to the CNB.
6.	After notification from the CNB containing information that there are no reasons for prohibiting of such announcement (or if the CNB fails to issue a letter of prohibition), the bid may be disclosed to public.
7.	Launch of the acceptance period: • Start: • after notification from the CNB (not prohibiting the announcement); or • no sooner than 15 days and no later than 30 days after the bidder notified the CNB (if the CNB fails to issue a letter of prohibition). • Duration: not less than four weeks. If the duration exceeds 10 weeks, the bidder will announce the day of expiry of the bid two weeks prior to such day of expiry.
8.	Notification of results (acceptance of the bid; entering into a contract; pro-rata satisfaction; compliance with conditions precedent; withdrawal from a contract) in writing (unless the European market regulator's rules prescribe otherwise) has to be made within one month of the end of the acceptance period.
9.	Publication of results (without undue delay) after the end of the acceptance period. The bidder will publish the results in the same manner in which the bid was announced. The bidder will also notify the board of directors and the supervisory board of the target company in writing.
10.	Payment of the offered consideration by the bidder.
11.	Re-opening of bid (follow-on squeeze-out) if the bidder acquired 90% of the shares. • Start: within 30 days following the last day of the duration of the previous acceptance period. • Duration: 90 days. • Further steps regarding the additional bid are governed, in principle, by rules governing the mandatory takeover bids.

Set out below is an overview of the main steps for a voluntary public takeover in the Czech Republic.

Voluntary public takeover (indicative timeline)



Start process	A Day	Day 0	Day (X)	E Day	E + 30	Day (X)	Day (X)
	Launch the bid by filing with Czech National Bank (CNB) for review	CNB notification that there is no prohibition on announcement	- Launch of acceptance period[1] - Bid may be disclosed to the public	End of the acceptance period and publication of results without undue delay	- Notification of results - Re-opening of bid (if the bidder acquired 90% of the shares)[2]	End of re-opened acceptance period	Payment of the offered consideration by the bidder

15 days from making the decision to proceed with the bid

15 – 30 days (if no CNB letter of prohibition of announcement)

minimum of four weeks

within 1 month

90 days

[1] Launch of acceptance period:

- after notification from CNB that it is not prohibiting the announcement; or
- no sooner than 15 days and no later than 30 days after the bidder notifies the CNB if the CNB fails to issue a letter of prohibition

[2] Re-opening of bid must begin within 30 days of the previous acceptance period

6. Takeover Tactics

6.1 Inside information

A Czech company is obligated to disclose to the public all "inside information" that directly relates to it. Disclosed information has to be comprehensive and may not be distorted.

- "Inside information" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the Czech takeover bid rules provide that an announcement can only be made upon the CNB's notification containing information that there are no reasons to prohibit such announcement (or its failure to issue a letter of prohibition). This means that the CNB would normally have to be informed prior to disclosure.

6.3 Insider dealing and market abuse

The rules relating to insider dealing and market abuse are under the Market Abuse Directive and the Market Abuse Regulation. The Market Abuse Regulation is directly applicable in the Czech legal system.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of some of the most probable mechanisms (given the Czech legal environment) that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. **Capital increase (poison pill)** Capital increase by the board (authorized capital).	• Capital increase by subscription of new shares shall only be permitted if the issue price of the previously subscribed shares has been paid up in full by the shareholders. This prohibition does not apply where

Mechanism	Assessment and considerations
	the registered share capital is only increased by in-kind contributions. • Requires approval by a majority of at least two-thirds of the votes of the present shareholders in total and for each type of shares whose rights are affected by that decision. Unless provided otherwise in the bylaws of the company, the general shareholders' meeting shall have quorum if the shareholders present hold shares the par value or the number of which exceeds 30% of the registered share capital. • The decision of the general shareholders' meeting to approve a capital increase shall be certified by a notary deed. • The decision becomes effective upon its registration in the Commercial Register (this does not apply to companies whose shares are admitted to trading on a European regulated market).
2. Share buyback Share buyback "with a view to avoid imminent and serious harm" to the company.	• It is unclear whether a normal share buyback authorization can be used following the announcement of a bid. • Acquisition of own shares shall only be permitted if the issue price of the previously subscribed shares has been paid up in full by the shareholders. • Requires approval of the general shareholders' meeting by a simple majority of votes by the present shareholders. The decision shall state conditions of the acquisition. • The target company may not acquire its own shares if such an acquisition would result in the company's bankruptcy pursuant to Czech insolvency legislation. • The acquisition shall not result in a decrease of equity below the subscribed registered share capital increased with the funds which cannot be distributed among the shareholders pursuant to the Czech Companies Act or the bylaws. • The target company has resources to establish a special reserve fund for own shares. • Buybacks are to be made in compliance with corporate, transparency and market (abuse) rules.
3. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for,	• If a significant part of the company's enterprise would be sold, a prior approval by the general shareholders'

Mechanism	Assessment and considerations
the company which is triggered by a change in control or the launch of a takeover bid.	meeting (with two-thirds of the votes cast) would be required.
4. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• Only transactions which have sufficiently progressed already (prior to receipt of notification of a takeover bid) may be implemented by the target's board. • Other transactions (especially those that can frustrate the takeover) require shareholders' approval after the takeover bid has been notified to the target.
5. Shareholders' agreements Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• It is generally acceptable for shareholders to enter into an agreement regarding the exercise of voting rights. • Assumes a stable shareholder base or reference shareholders.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following an unconditional and unlimited takeover bid, the bidder holds 90% of the registered share capital with voting rights and 90% of the voting securities, the bidder is required to make a squeeze-out bid to all other holders of securities admitted to trading on a European regulated market.

This type of summarized squeeze-out bid is not subject to the rules and procedures that would otherwise apply to a stand-alone squeeze-out procedure outside the framework of a voluntary or a mandatory public takeover bid.

In the event of a summarized squeeze-out, the takeover bid will be reopened at least at the price set out for the original takeover bid with an acceptance period of 90 days and will start within 30 days following the expiry of the last day of the acceptance period of the original takeover bid.

7.2 Sell-out

The sell-out right is granted to minority shareholders, who may request the majority shareholder to buy all their shares in the company in the case that such majority shareholder meets the criteria to enforce a squeeze-out.

7.3 Restrictions on acquiring securities after the takeover bid period

For 1 year as of the end of the takeover bid period, the bidder and the persons acting in concert with the bidder cannot make another bid aimed at acquiring the securities of the same target company unless an obligation to make a takeover bid arises or in a case of a counter-bid.

8. Delisting

A Czech company that is listed on the PSE must inform both the CNB and the PSE that it has decided to delist its shares from the PSE. Prior consent from the CNB is required if a squeeze-out is to be approved by the general meeting of a Czech company with its shares listed on the PSE prior to such delisting.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Tomáš Skoumal and Libor Basl in the Prague office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in the Czech Republic.

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Denmark

1. Overview

Denmark currently has a well-developed regulatory regime and few obstacles to public takeovers and direct foreign investments.

2. General Legal Framework

2.1 Main legal framework

Denmark's regulatory regime aims to protect the shareholders of a target company, safeguard the rights of minority shareholders, secure equal treatment of shareholders belonging to the same share class and establish the basis for a well-adjusted and efficient capital market. The main rules and principles of Danish law relating to public takeover bids can be found in:

- the Capital Markets Act, Consolidated Act no. 198 of 26 February 2024, as amended (replacing the Danish Securities Trading Act) implementing the Takeover Directive (2004/25/EC) and Regulation (EU) No. 596/2014 on Market Abuse (MAR)
- the Takeover Order, Executive Order no. 636 of 15 May 2020 supplementing the regulation in the Capital Markets Act
- the guidelines to the Takeover Order, Executive Order no. 1171 of 31 October 2017, issued by the Danish Financial Supervisory Authority (DFSA)
- the Danish Companies Act, Consolidated Act no. 1168 of 1 September 2023, as amended, regulating both private and public limited companies, containing, for example, the regulation of squeeze-out procedures
- the Market Abuse Regulation (the "**MAR**"), consolidated Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, which contains rules regarding insider information, insider dealing and market manipulation

The main body of the Danish takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid, for example, the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors. Accordingly, there are still certain differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Denmark, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The Prospectus Regulation, consolidated Regulation (EU) 2017/1129, as amended, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC.

(b) Stock exchange regulations issued by Nasdaq Copenhagen, including the recommendations on corporate governance.

(c) Further rules may apply to bids on companies in certain sectors, such as companies operating under the supervision of the Danish Financial Supervisory Authority (the "**DFSA**") (*Finanstilsynet*), for example companies with license to conduct banking, insurance or finance business operations.

(d) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement

Public takeover bids are subject to the supervision and control of the DFSA. The DFSA is the principal securities regulator in Denmark.

The DFSA has a number of legal tools available to supervise and enforce compliance with the public takeover bid rules, including administrative fines.

The DFSA may in certain cases grant exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 General principles

The following general principles apply to public takeovers in Denmark. The below principles are based on the Takeover Directive and the Capital Markets Act:

(a) all holders of the securities of a target company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. The board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the target company's places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false conditions for trading must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that it has certain funds and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

It should be noted that Danish law has a strong focus on the rights of shareholders in relation to takeover bids. However, it is not only the short term interests of the current shareholders that will be in focus or that will be the decisive factor, as the long term interests of the company subjected to the bid may also influence the final decision.

2.5 Foreign investment restrictions

Foreign investments in Denmark are governed by the Danish Investment Screening Act and customary anti-trust approvals.

'Foreign direct investments' are defined as gaining control or significant influence over a company or entity domiciled in Denmark by direct or indirect possession of or control over the shares or voting rights in the company or equivalent control by other means, including the purchase of assets and long-term loans. Foreign direct investments include investment in a new company being established in Denmark in a particularly sensitive sector, where similar control or significant influence is achieved.

Control or influence gained from an investment can be direct or indirect, i.e. control can be exercised through other companies and through several countries, known as 'ownership chains'.

The Act covers not only the acquisition of shareholdings or voting rights in a company or entity, but also if similar control is achieved by other means. i.e. if, in other ways than by acquiring voting rights, similar control or significant influence is achieved, e.g. by agreement-based control and influence, by purchasing assets in the Danish company or by long-term loans.

Foreign investors must apply for authorization from the Danish Business Authority if they intend to directly or indirectly acquire at least 10% of the shareholdings or voting rights in a company or entity domiciled in Denmark, and the Danish company or entity belongs to particularly sensitive sectors in relation to national security or public order.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

Danish law allows multiple classes of shares with different voting rights. One class of shares may be without any influence, meaning that it is possible to issue shares without any voting rights or, alternatively, a certain class of shares may be entitled to 10 or 100 times the voting rights of another class. Consequently, the number of shares does not always correspond to the voting power. It is not possible to issues shares without the right to attend and speak at the annual general meeting.

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Danish listed entity:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to introduce additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda, by request to the board of directors prior to the issuance of the notice of a meeting. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (orally at the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons (as provided for in article 109 of the Danish Companies Act).

Shareholding	Rights
5% of the shares or the votes	• Substantial holding level which requires the holder to notify the listed company, the DFSA and typically also publish the information via the regulated market. Subsequent increases in holdings need to be notified when the shareholder passes the following holding thresholds: 10%, 15%, 20%, 25%, 33⅓%, 50%, 66⅔% and 90% of the total number of shares or votes in the company. • The right to request the board of directors to convene a general shareholders' meeting.
10% of the shares	• The right to file derivative action against the directors on behalf of the company. • The right to block decisions which require more than 90% majority according to the Companies Act.
25% of the votes	• The right to request a review (*granskning*) of the company, including to check the company's books, financial records and acts of the company's corporate bodies, or to appoint a minority auditor who will take part in the statutory audit.
More than 33⅓% of the votes or capital (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block any changes to the articles of association. Substantial holding level which requires the holder, once the level is reached, to announce the magnitude of the shareholding and, within four weeks, place a mandatory bid regarding the remaining shares.
More than 50% of the votes (at a general shareholders' meeting)	The ability at a general shareholders' meeting to pass resolutions regarding most issues. However, some resolutions require two-thirds of the votes and the capital and some resolutions require 90% majority of votes and capital. When holding more than 50% of the votes, the shareholder has the ability to, among other things: • appoint and dismiss directors and approve the remuneration and, as relevant, severance package of directors; • approve remuneration policies for incentive schemes for the executive management; • appoint and dismiss statutory auditors and approve their remuneration; • approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors); and • approve payment of dividend.
At least 66$^{2}/_{3}$% of the votes and capital	The ability to ensure that certain special resolutions are passed, e.g., directed share issues and to change the articles of association.

Shareholding	Rights
More than 90% of the votes and the shares held by a single shareholder	The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**") and corresponding right for the minority shareholder to request a redemption of shares.

3.2 Restrictions and careful planning

Danish law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential offeror. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential offeror or target company intends to initiate a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse according to the MAR and the Capital Markets Act are applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, amongst other things, that manipulation of the target's stock price, e.g., by creating misleading rumors is prohibited. In addition, the rules prohibiting insider trading prevent an offeror that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

3.4 Disclosure of shareholdings

The rules relating to the disclosure of significant shareholdings in listed companies (the so-called 'transparency rules') are contained in the Capital Markets Act and the Danish Companies Act. These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, with Directive 2013/50/EU amending the Transparency Directive.

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential offeror starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached thereto have passed an applicable disclosure threshold. As stated above, the relevant disclosure thresholds are 5%, multiples of 5% up to 25%, 33⅓% and 50%, 66⅔% and 90% thereafter.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements, such as call option agreements or voting agreements.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency.

These rules include that a company must immediately announce all inside information, subject to exceptions contained in Article 17 of the MAR as referred to in the Capital Markets Act. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid would in most cases constitute inside information. If so, the target company may be obliged to announce this. However, the board of the target company can delay the announcement for a limited period of time if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiation of a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

3.6 Announcements of a public takeover bid

An offeror that intends to make a public takeover bid must first undertake to comply with the Capital Markets Act and the Takeover Order by a notification to the regulated market on which the target company's shares are admitted to trading. After the notification, the offeror may announce the bid. As a takeover bid announcement will normally influence the price of the target's shares, it must, as far as possible, contain all the facts that are relevant to making a proper assessment of the share price.

Within four weeks from the announcement, the bidder must file an offer document with the DFSA. The DFSA usually approves the offer document within 10 business days. As soon as the approved offer document is published, the acceptance period can start.

If there are rumors or leaks that a potential offeror intends to launch a public takeover bid, the DFSA could force an announcement. This could lead to an early disclosure and possibly an acceleration of the preparations by an offeror, as the bidder could be forced to make an announcement as to the offeror's intentions.

3.7 Early disclosure

If an offeror has been compelled by the DFSA to make an early disclosure, the DFSA may decide that a bid must be announced within a certain period of time or that the offeror must otherwise refrain from making a bid.

3.8 Due diligence

The Danish public takeover bid rules do not contain specific rules as to whether a prior due diligence can be organized, nor how such due diligence should be organized. Nevertheless, the concept of a prior due diligence or pre-acquisition review by an offeror is generally accepted and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures and data rooms.

There is no obligation for the target board to allow a due diligence process and it is up to the board of directors to decide whether or not a due diligence is appropriate in the individual case. It is unlikely that a reasonable refusal from the board of directors to allow a due diligence could lead to the target board being held liable for damages on any ground. The target board must determine to what extent a request for due diligence should be met, taking into consideration the commercial interest of the target and its shareholders, and keeping in mind the principle that all shareholders must receive equal treatment. Thus, the target board must assess whether or not the offeror is serious and if the terms of the takeover bid are sufficiently favorable to justify a due diligence.

3.9 Acting in concert

For the purposes of the Danish takeover bid rules, persons are "acting in concert":

- if they collaborate with the offeror, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring control over the target company, frustrating the success of a takeover bid or maintaining control over the target company;
- if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy vis-à-vis the target company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. This is the case, for example, when a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether persons act or do not act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 33⅓% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 33⅓% threshold.

4. Effecting a Takeover

There are two main forms of takeover bids in Denmark:

- a voluntary takeover bid, in which an offeror voluntarily makes an offer for all or up to 33⅓% of the voting securities issued by the target company. A bid for less than all of the shares is uncommon; and
- a mandatory takeover bid, which an offeror is required to make if, as a result of an acquisition of securities where controlling influence is established, mainly if the acquirer owns more than ⅓ of the voting rights in the target company.

4.1 Voluntary public takeover bid

- The offeror is free to make the takeover bid subject to specified conditions that the offeror may not have control over, such as, amongst other things, merger control clearance, minimum acceptance level (typically 90%), the offer being recommended by the board of directors, resolutions by the general meeting in the target company approving amendments of the articles of association, e.g., to delete defensive measures, voting restrictions, or a material adverse change condition. Financing being a pre-condition will typically not be accepted.
- The offeror is in principle free to determine the form of consideration offered to the target shareholders, cash or shares or other contribution in kind, or a combination thereof.
- The offeror is in principle free to decide the price if the consideration is to be paid in cash, subject to the condition that any price paid by the offeror within six months before or after the bid, or during the bid, must be reflected in the price.

- The offered price may be paid in cash, securities, in kind or a combination of both. All shareholders must have equal rights to any form of consideration, subject to exceptions granted by the DFSA.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) as a result of an acquisition of voting securities, directly or indirectly holds more than 33⅓% of the (actual outstanding) voting securities of the target company. The mandatory takeover bid is unconditional. However, instead of making a mandatory bid, the offeror may make a voluntary bid. The DFSA may grant exceptions from the mandatory public takeover bid obligation. Situations in which the DFSA has granted exceptions include the following:
    - the stake is acquired from an affiliate, i.e., no change of real control;
    - a third party exercises control over the target company or holds a larger shareholding in the company than the party holding more than 33⅓%;
    - the stake is acquired within the framework of a subscription to a capital increase by a target company in financial difficulties, which has been decided upon by the general shareholders' meeting; and
    - the stake is acquired in connection with an issue in kind, i.e., where the third party is being paid shares in the target company as consideration when the target company is making an acquisition.
- In terms of the price offered and the form of the consideration, the same rules apply as in case of a voluntary takeover bid. In addition:
    - the price must be equal or higher to the price paid by the bidder for any shares within a period of six months before or after the bid, or the weighted average trading price for securities of the target company which have been settled in shares;
    - the consideration offered can consist of cash, securities or a combination of both. However, a cash alternative must be offered; and
    - the DFSA may allow exceptions from the rules on consideration.

4.3 Follow-on squeeze-out and sell-out right

- Follow-on squeeze-out – a bidder will be able to squeeze out the residual minority shareholders if it holds, directly or indirectly, more than 90% of the shares and votes of the target company.
- Sell-out right if the bidder is not itself launching a squeeze- out – minority shareholders have a sell-out right if the offeror holds, directly or indirectly, more than 90% of the shares and votes of the target company.

5. Timeline

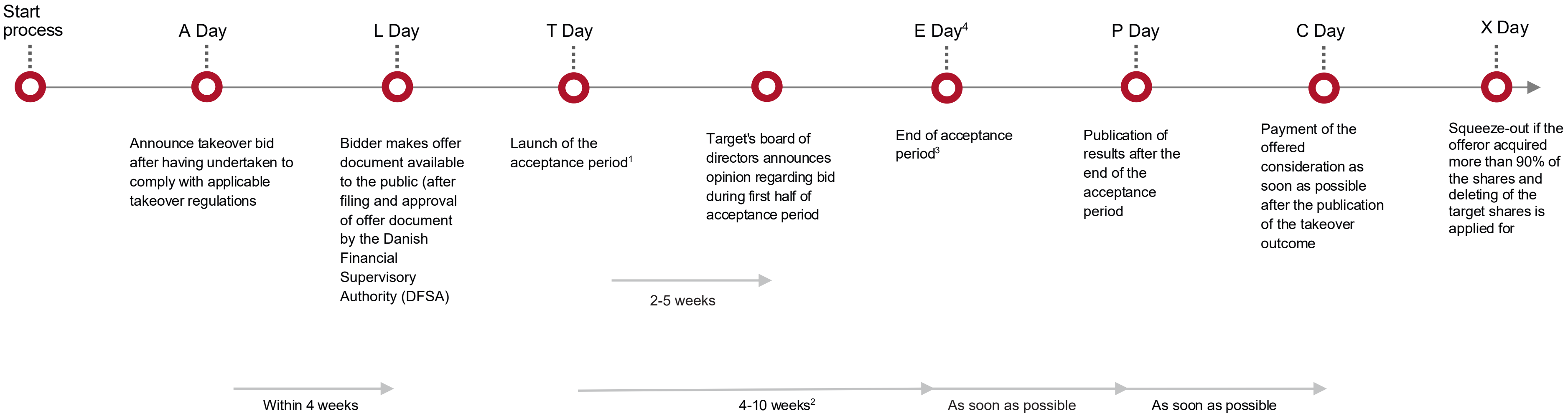
As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process in Denmark.

Step	
1.	Preparatory stage: • Preparation of the bid by the offeror (study, due diligence, financing and draft prospectus). • The bidder approaches the board of the target company and/ or its key shareholders. Due to the ownership structure on the Danish stock market, it is usually advisable to approach key shareholders at this stage. • Negotiations with the board of the target company and/or its key shareholders. It is usually advisable to negotiate with key shareholders, possibly securing irrevocable undertakings where the shareholders agree to accept the takeover bid under certain circumstances.
2.	Launching of the bid: • The offeror may announce a bid after having undertaken to comply with the applicable takeover regulations. • The board of the target company issues a statement recommending whether the target shareholders should accept the bid or not. • Within four weeks from the announcement, the offeror must make an offer document public. Prior to that, the offer document must have been filed with, and approved by, the DFSA. • The offeror may not withdraw from the bid after it has been announced. • In a negotiated bid, the offeror is expected to include the response on the bid from the board of directors of the target company.
3.	Launch of the acceptance period: • Start: not before the offer document has been made public. • Duration: not less than four weeks and not more than 10 weeks. • The acceptance period may be extended (by at least two weeks) if the bidder has provided for possible extension in the offer document, after approval by the DFSA, or in accordance with applicable takeover regulation. The total acceptance period may not exceed 10 weeks or, if the offer is conditional on the attainment of necessary regulatory approval, nine months. • Without prejudice to the above, the acceptance period may be extended if the offeror has announced that it will complete the bid.
4.	Publication of results as soon as possible after the end of the acceptance period.
5.	Payment of the offered consideration by the offeror as soon as possible after publication of the result.
6.	Squeeze-out if the offeror acquired more than 90% of the shares and delisting of the target shares is applied for.

Set out overleaf is an overview of the main steps for a voluntary public takeover in Denmark.

Voluntary public takeover (indicative timeline)



Start process

A Day
Announce takeover bid after having undertaken to comply with applicable takeover regulations

L Day
Bidder makes offer document available to the public (after filing and approval of offer document by the Danish Financial Supervisory Authority (DFSA)

T Day
Launch of the acceptance period[1]

Target's board of directors announces opinion regarding bid during first half of acceptance period

E Day[4]
End of acceptance period[3]

P Day
Publication of results after the end of the acceptance period

C Day
Payment of the offered consideration as soon as possible after the publication of the takeover outcome

X Day
Squeeze-out if the offeror acquired more than 90% of the shares and deleting of the target shares is applied for

2-5 weeks

Within 4 weeks

4-10 weeks[2]

As soon as possible

As soon as possible

(1) Not before the offer document has been made public.
(2) Bidder might publish a supplement to the offer document.
(3) The acceptance period may be extended (by at least two weeks) if the bidder has provided for possible extension in the offer document, after approval by the DFSA, or in accordance with applicable takeover regulation. The total acceptance period may not exceed 10 weeks or, if the offer is conditional on the attainment of necessary regulatory approval, nine months.
(4) Between A Day and E Day a competing bid might be published.

6. Takeover Tactics

6.1 Inside information

A Danish company has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public:

- "*Inside information*" means information of a precise nature which has not been made public, relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "*precise nature*" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information that a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the target company to determine if certain information qualifies as "inside information". In many circumstances, this will be a difficult exercise and a large gray area will exist as to whether certain events will need to be disclosed or not.

The public disclosure of inside information may be delayed according to Article 17.4 of the MAR.

6.2 In the event of a public takeover bid

Prior to the announcement of a public takeover bid, the parties will rely on the provisions in Article 17.4 of the MAR to delay the public disclosure of the potential bid. In case of rumors or leaks, an obligation to disclose information may be imposed by MAR, listing rules or by a decision from the DFSA.

6.3 Insider dealing and market abuse

Rules on what constitutes insider dealing and market abuse follows from the MAR. In principle such offences are subject to criminal prosecution and punishable according to the Capital Markets Act, which is a transposition of the of Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse. As the framework is based on EU legislation, similar rules on insider dealing and market abuse exist in other jurisdictions of the EEA.

As a general rule, a potential bidder should refrain from trading in the target company's securities without appropriate prior legal consultation in order to minimize the risk of any unintentional negative effects.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid.

6.4 Anti-takeover defense mechanisms

Several Danish companies have implemented measures against hostile takeovers in their articles of association, including limitations on voting rights, a voting ceiling and division of the company's shares into classes, typically into a class of unlisted shares with the majority of the voting rights and a listed class of shares with minimum voting rights. As a result, hostile takeovers are not frequently experienced in Denmark. However, the Danish Companies Act provides that shareholders representing at least two-thirds of both votes and capital may at a general meeting adopt a resolution suspending all special rights or restrictions associated with a shareholding or specific shares if a public takeover bid is submitted to the company. This 'break-through' rule, which is based on the Takeover Directive, only applies to special rights or restrictions established after 31 March 2004. Furthermore, such suspension may be restricted only to a public tender offer submitted by a company within the European Union or EEA.

When a voluntary takeover bid is made, the board of directors must weigh the interests of the shareholders against other relevant interests, including the interests of the target itself (if contrary to the shareholders), the target's creditors and the employees. However, the shareholders' interests will take priority in most situations. Measures available for the board of directors include: Refusal to have due diligence carried out by the bidder, a recommendation to the shareholders to refuse the submitted tender offer, determining the possibility of a more favorable competing bid, and so on. Alternatively, the board of directors may decide to actively defend against the takeover by the use of a capital increase directed at friendly third parties, "poison pills", conducting merger negotiations with third parties, and so on. However, these measures should be carefully considered as the directors risk incurring liability if not acting in the best interests of the target. It is generally advisable (and in accordance with the Danish Corporate Governance Recommendations) to involve the shareholders in such actions. Further, under the Danish Companies Act, shareholders representing at least two-thirds of both votes and capital may at a general meeting resolve to introduce a procedure whereby the board of directors must obtain the approval of the general meeting before taking any actions that may hinder or frustrate a takeover bid, other than resolving to seek alternative bids.

6.5 Squeeze-out

If, following the takeover bid, the bidder directly or indirectly holds more than 90% of the share capital with voting rights, the bidder can force the other shareholders to sell their shares at the price offered in the takeover bid.

This type of squeeze-out procedure is basically subject to the same rules and procedures that would otherwise apply to a stand-alone squeeze-out procedure outside the framework of a voluntary or mandatory public takeover bid, with the exception of the price.

6.6 Redemption

In the same situation referred to in 6.5, the minority shareholders have a corresponding right to force redemption of their shares.

6.7 Restrictions on acquiring securities after the takeover bid period

The Takeover Order sets out an equal-treatment period from the start of the offer period until six months after expiry of the offer period. If the majority shareholder, within a period of six months after the expiry of the offer period, enters into agreements regarding the transfer of shares in the company on more attractive terms than those offered in the mandatory or voluntary bid, the majority shareholder is obliged to compensate the shareholders who accepted the original bid.

7. Competing takeover bids

7.1 Several offerors affecting the acceptance period

A competing takeover bid is an offer that is announced to the target company where another takeover bid has already been announced but has not been accepted and completed.

If the target company receives a competing takeover bid from a new offeror before the acceptance period ends, the new takeover bid's acceptance period may not be shorter than the already presented takeover bid acceptance period.

The acceptance period for the existing takeover bid has to be extended until the new acceptance period ends, unless it is withdrawn, due to a longer acceptance period for the new takeover bid.

The existing offeror then has to extend the acceptance period, if the offeror wants to maintain the offer. The offeror then has to draft an addendum regarding extending the acceptance period. The addendum has to be approved by the DFSA.

The latest takeover bid or addendum thereto determines the other takeover bids' acceptance period.

7.2 Withdrawal of a takeover bid or the shareholders' acceptance

An offeror of a published voluntary takeover bid may withdraw the takeover bid:

(a) When an announcement for a competing offer is published and until five business days after the publication, or

(b) When the offer document for the competing offer has been published and until five business days after the publication.

With several takeover bids the shareholders, who might have accepted a takeover bid before the acceptance period ends may withdraw their acceptance within three business days following the publication of a new offer document. With several takeover bids the shareholder may also withdraw the acceptance within three business days following the publication of an addendum.

7.3 The board of directors' position

In case several takeover bids have been submitted the board of directors of the target company may provide an overall statement instead of one per takeover bid. The statement comprises the board of directors' position on all takeover bids and their reasons behind.

8. Delisting

Under the stock exchange regulations issued by Nasdaq Copenhagen, a delisting must be decided by shareholders at a general meeting representing at least 90% of the votes cast and of the represented capital.

9. Contacts within Baker McKenzie

Joakim Falkner and Stefan Balazs in the Stockholm office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Denmark.

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Egypt

1. Overview

The Alexandria stock exchange was officially established in 1883, with the Cairo stock exchange following in 1903. Both exchanges were very active in the 1940s. However, the central planning and socialist policies adopted in the mid-1950s led to both exchanges becoming dormant between 1961 and 1992.

In the 1990s, the Egyptian government's restructuring and economic reform program resulted in the revival of the Egyptian stock market, and a major change in the organization of the Cairo and Alexandria stock exchanges took place in January 1997 with the election of a new board of directors and the establishment of a number of board committees.

In February 2007, the Minister of Investment issued a decree adding a new chapter 12 to the executive regulations of the Capital Markets Law ("**Chapter 12**"), which was replaced by a Prime Ministerial Decree in 2018. Chapter 12 sets out certain disclosure requirements and other regulatory measures and thresholds to create a more efficient and regulated environment for the Egyptian public M&A market. Chapter 12 also covers the disclosure of "potential offers", mandatory offers, the role of investment banks and financial advisers, requirements for setting the offer price and the required notifications following the acquisition of a substantial shareholding. Generally, the Financial Regulatory Authority ("**FRA**") is legally entrusted with enforcing Chapter 12 in relation to public tender offers.

In March 2017, the Minister of Investment issued a decree that legal persons shall abide by the rules of disclosure of the beneficiary. The rules are set out in annex 7 of the executive regulations. These apply when issuing shares in a joint stock company or partnership limited by shares, amending the shareholder ownership structure, requesting an approval for a mandatory or voluntary public tender offer or an approval for an exemption, offering securities for public subscription in the Egyptian market or listing securities on the Egyptian stock exchange.

In March 2018, the Capital Market Law was amended to allow (i) the establishment of a private stock exchange, (ii) the establishment of a futures exchange and (iii) for regulation to issue and trade financial instruments.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Egyptian law relating to public tender offers can be found in the Capital Markets Law 95 of 1992 ("**Capital Markets Law**") and its executive regulations ("**CML Regulations**").

The main body of the Egyptian tender offer legislation is based on the Capital Markets Law, the CML Regulations and the Egyptian Stock Exchange Listing Rules, together with its implementation directions. The legislation is aimed at harmonizing the rules on public tender offers for public companies. A company is considered to be a public company if it is either:

(a) listed on the Egyptian stock exchange ("**EGX**"); or

(b) a delisted company whose shares are still publicly offered. For these purposes, "publicly offered" means a company that (i) is incorporated or (ii) has had its capital increased, based on a subscription prospectus certified by the FRA.

2.2 Miscellaneous rules and principles

The aforementioned legislation applies to public companies and contains the main legal framework for public tender offers in Egypt. Within this legislation, there are a number of rules and principles that are to be taken into account when preparing or conducting a public tender offer, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies. These rules are embodied in the Egyptian Stock Exchange Listing Rules on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (see 3.4); and

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are based on chapter 11 of the executive regulations of the Capital Markets Law (see 6.2).

2.3 Supervision and enforcement by the Financial Regulatory Authority

Public tender offers are subject to the supervision and control of the FRA. The FRA is the principal securities regulator in Egypt.

The FRA has a number of legal tools that it can use to supervise and enforce compliance with the public tender offer rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in cases of non-compliance.

The FRA also has the power, in certain cases, to grant exemptions from the rules that would otherwise apply to a public tender offer.

2.4 Foreign investments

As a general rule, foreign investments are not restricted in Egypt. However, certain activities conducted in Egypt by foreigners are subject to reporting requirements or prior approvals from certain competent authorities in Egypt. As an exception to the general rule, foreign ownership is strictly prohibited in activities such as: commercial agency, ownership of properties and investments in the Sinai Peninsula, desert land and agricultural land (as described in more detail below). A brief summary of key restrictions and prior approvals in major sectors in Egypt is outlined below:

(a) Banking sector

- There is an obligation on any natural or legal person (whether Egyptian or foreign), who owns more than 5% but less than 10% of the capital of a bank, to notify the Central Bank of Egypt within 15 days from the date of acquisition.
- Further, any natural or legal person (whether Egyptian or foreign) is not allowed to own more than 10% of the bank's capital or any percentage which leads to the actual domination of it except with the prior approval of the board of directors of the Central Bank of Egypt.

(b) Insurance sector

- There is an obligation on a natural or legal person who owns 5% of the capital of any insurance or reinsurance company to notify the FRA within two weeks from the date of acquisition of such percentage.
- According to the amended Insurance Law No. 155 of 2024 ("**IL**"), increasing ownership of a shareholder by 5% or its multiples requires prior approval of the FRA. In addition, the prior approval of the board of directors of the FRA is required at various ownership thresholds (10%, 25%, 33.333%, 50%,

66.666%, 75% and 90%), and an application with supporting documentation must be submitted at least 60 business days in advance. Acquisition of 25% or more requires, in addition to the standard documentation, specifying the objectives of ownership/control, submitting a business plan including directions as to management and if the Financial Institution is a foreign entity, it must provide evidence that it is subject to the supervision of a regulator in its jurisdiction similar to the FRA or CBE.

- If the acquirer controls 10% or more of the relevant insurance market, FRA prior approval must be obtained (this is a separate approval).
- The IL provides under article 168 (paragraph 5) that if the applicant requesting ownership in an insurance company is a foreign insurance company or a foreign financial institution, it must provide evidence that it is subject to the supervision of a regulator in its jurisdiction similar to the FRA or CBE.
- In addition, the IL sets out in article 155 the requirements for incorporating insurance companies, which include (amongst other things) a requirement for such entities to obtain their regulator's prior approval to work in Egypt by applying the concept of collective authority. Although such approval mainly applies for incorporation of new insurance companies, as a practical matter the FRA may also request such approval to be granted in the case of an acquisition of an insurance business in Egypt by a foreign company.

(c) Commercial agency activities

- Foreign investors are not permitted to engage in commercial agency activities. Such activities are reserved for Egyptian nationals.

(d) Ownership of properties in the Sinai Peninsula

- It is of paramount importance to note that foreigners are strictly prohibited from owning properties and investing in the Sinai Peninsula. Exceptions were made to some regions (i.e. Sharm El Sheikh, Dahab and the Gulf of Aqaba) provided that prior approval is obtained from the competent regulatory authorities in Egypt.

(e) Ownership of desert land

- The ownership of a desert lands is limited to Egyptian nationals only unless a presidential decree is granted to foreign investors to own the relevant land.

(f) Ownership of agricultural land

- The ownership of agricultural lands is reserved for Egyptian nationals only.

(g) Ownership of non-banking activities companies:

- There is an obligation on a natural or legal person who owns 5% or more (but less than 10%) of the capital or voting rights of any of the said companies to notify the FRA within two weeks from the date of acquisition of such percentage.
- Prior approval must be granted by the FRA in the case of an acquisition by a natural or legal person exceeding 10% of the company's capital or in the case

of ownership of such person increasing to 5% and its multiples with respect to the capital or voting rights of said companies.

There are certain other sectors that require prior regulatory approvals in Egypt, whether for foreign or local investors, such as healthcare, pharmaceuticals and TMT (amongst others). Accordingly, legal analysis on regulatory approvals in each sector must be undertaken in advance to establish what approvals might be required. Separately, Law No.3 of 2005 regulates anti-trust notifications and approvals that may be required in the context of an acquisition in Egypt.

2.5 General principles

The following general principles apply to public tender offers in Egypt. These rules are based on the Capital Markets Law, the CML Regulations and the Egyptian Stock Exchange Listing Rules:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the tender offer. Where it advises the holders of securities, the board of the offeree company may give its views on the effects of implementation of the tender offer;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the tender offer;

(d) false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the tender offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must only announce a tender offer after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a tender offer for its securities.

2.6 Taxes on securities transactions

A tax shall be imposed on all securities transactions whether Egyptian or foreign, listed on the stock exchange or not, and no costs shall be deducted. The buyer and the seller shall bear the burden of this tax.

Tax is charged on capital gains from trading in securities listed on the Egyptian Exchange. However, this provision was suspended for two years starting on 17 May 2015, and then extended for another three years to 16 May 2020. Since then, as at the time of writing, the government has not provided any formal update on this. However, a new amendment has been introduced to the income tax law in this regard and said amendment applies 10% tax on the capital gains of the listed companies.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a public company.

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • In the case of a merger, the right to request an exit from the company. • In the case of delisting, the right to request an exit from the company.
5% of its shares	• The right to file a minority claim against the directors on behalf of the company. • The right to put additional items on the agenda of a general shareholders' meeting. • The right to request the board of directors to convene an ordinary general shareholders' meeting. • The right to request the FRA to suspend any resolution issued by the General Assembly to the detriment of such shareholders or for the benefit of a specific category of shareholders or to bring about a private benefit for the board of directors or others.
10% of its shares	• The right to request the board of directors to convene an extraordinary general shareholders' meeting. • The right to submit, subject to certain conditions, a request to the FRA or the General Authority for Investment and Free Zones (GAFI) to inspect the company's regular books, financial records and acts of the company's corporate bodies. • Holders of 10% are entitled to request a board seat for each 10% they hold, subject to election by the cumulative voting method. • The right to keep information, copies of the documents of the opposition contracts or company's transactions with related parties.
More than 25% of its shares (at a general shareholders' meeting)	• The ability at a general shareholders' meeting to block: • changes to the main objective(s) of the company; and

Shareholding	Rights
	- changes to the articles of association related to mergers, capital increases, capital reductions and dissolution of the company.
More than 33.33% of its shares (at a general shareholders' meeting)	- The ability at a general shareholders' meeting to block: - extraordinary general assembly resolutions; and - the other matters set out above.
More than 50% of its shares (at a general shareholders' meeting)	- The ability at a general shareholders' meeting to: - appoint and dismiss directors and approve the remuneration and, as relevant, severance package of directors; - appoint and dismiss a statutory auditor and approve its remuneration; - approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors, if any); - grant discharge from liability to the directors and statutory auditor for the performance of their mandate; and - take decisions for which no special majority is required.

3.2 Restrictions and careful planning

Egyptian law contains a number of rules that already apply before a public tender offer is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential tender offer by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions and hurdles are summarized at high-level below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public tender offer.

3.3 Insider dealing and market abuse

Before, during and after a tender offer, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.2 below. The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent the use of such information in a tender offer.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public tender offer. Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be under an obligation to announce its stake if the ownership attached to it has passed an applicable disclosure threshold. The relevant disclosure thresholds in Egypt are 5% of the ordinary shares or the voting rights and multiples thereof for shareholders and 3% of the ordinary shares or voting rights and multiples thereof for board members. These are in addition to the requirements related to the thresholds referred to in 5.5 below.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by its related parties (see 3.9 below), including affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements, such as a call option agreement.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules require a target company to immediately announce the commencement of negotiations for a bid and all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public tender offer may constitute inside information. If so, the target company must announce this.

3.6 Announcement of a public tender offer

After commencement of serious negotiations either in writing or verbal, also, if the target company receives a notification from the bidder that it intends to announce a public tender offer or the bidder and the target company sign a memorandum of understanding then the target company must immediately inform the FRA and the EGX of the bidder's intention. In addition, the bidder will have to make the necessary filings with the FRA to launch the public tender offer within 60 business days from the date the target company informs the FRA and the EGX of the potential tender offer. The FRA has the right to extend such period for another 60 business days based on reasonable grounds that the bidder submit. If there are reasonable grounds to believe that a (potential) bidder intends to launch a public tender offer, the EGX or the FRA could request the target company to clarify the situation. If the price of the securities of the target company is being affected, the EGX can suspend trading of the securities until it obtains clarification from the target company. The chairman of the FRA has the right, once the bidder submits the public tender offer to suspend trading of the securities of the target company.

3.7 Early disclosures - Put-up or shut-up

(a) Early disclosure demanded by the FRA - Whenever required for the good functioning of the markets, the target company that may be involved in a possible public tender offer should make an announcement without delay to the FRA and the EGX about any rumors which might affect the prices of its securities in the market.

(b) Put-up or shut-up - In addition to the foregoing rule, the EGX and the FRA have a sanction mechanism in case the target company does not announce the bidder's intention to submit a public tender offer. The relevant rules can be summarized as follows:

- The FRA or the EGX can force an announcement by the target company to clarify rumors relating to it that may affect the price of the securities of the target company.
- A bidder must launch the tender offer within 60 business days from the date the target company informs the FRA and the EGX of the potential tender offer. The FRA has the right to extend such period for another 60 business days if the bidder provides reasonable grounds for this.
- If a bidder does not submit the necessary filings to the FRA to launch the public tender offer within the 60-business day term imposed by the FRA or

any extension thereof, the bidder (and the persons related to it) is not permitted to launch a tender offer for the securities of the target company for six months following the lapse of such time limit unless approved by the FRA based on reasonable grounds submitted by the bidder. If the bidder did not submit during the prescribed period, they will be prohibited by the FRA from purchasing shares of the target company during the six-month period.

3.8 Due diligence

The Egyptian public tender offer rules do not contain specific rules regarding the question of whether prior due diligence can be organized, save in certain limited areas as outlined below. Although the concept of prior due diligence or a pre-acquisition review by a bidder is generally accepted in the market and by the FRA as well (and appropriate mechanisms have been developed in practice to organize due diligence or a pre-acquisition review and to cope with potential market abuse and early disclosure concerns), there is a pre-approval process in certain sectors as well as competition law aspects that must be complied with according to the latest regulatory framework summarized below:

(a) If an offeror wishes to conduct due diligence on a target company that operates in the non-banking financial services sector, it must submit a request to the FRA pursuant to article 8 of the FRA decree no.178 of 2024, to obtain prior approval from the FRA before initiating the due diligence process.

(b) If an offeror wishes to conduct due diligence on a target company that is a bank or financial institution, it must obtain prior approval from the CBE before initiating the due diligence process.

(c) The Egyptian Competition Authority ("**ECA**") is set to issue regulations in relation to the data room preparation while sharing commercially sensitive information ("**CSI**") between competitors during due diligence, however, the final form of the regulations and provisions included therein are yet to be finalized for public dissemination. The anticipated rules include (amongst other things) the following:

- The bidder must form a "Clean Team", that would be the only team that has the right to access the information.
- The Clean Team members must satisfy certain conditions, including (amongst others) the following:
    - They must not be from the managing team of the bidder who can affect decisions (it is advisable whenever possible to appoint a third party);
    - The Clean Team members must be limited in number;
    - They must have an internal protocol on how to review, access, disclose and share the data and documents;
    - The reports shared must be blinded aggregate reports, that is (i) if there is information on CSI that is not material to the due diligence assessment and reports, it should be completely excluded and (ii) if there is CSI that is important to the assessment of the transaction and business, it should be consolidated rather than broken down by product or by customer;
    - The Clean Team may only report final non-commercially sensitive conclusions to the receiving party; and

  - Storage of the files and documents reviewed must not be in the same place with other employees who are not part of the Clean Team.

3.9 Acting in concert

For the purpose of the Egyptian tender offer rules, persons are considered related parties:

- if they collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring the control over the target company including through voting at its general assembly meetings or board meetings, frustrating the success of a tender offer, or maintaining the control over the target company. Natural persons and any of their second degree relatives, juridical persons that consist of two or more persons where most of their shares are owned directly or indirectly by the other party or are owned by one person and holding companies, affiliates and subsidiaries are all considered related parties; or
- if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy in relation to the target company.

Persons that are affiliates of each other are deemed related parties or to have entered into an agreement to act as related parties.

The concept of related parties is very broad, and in practice many issues can arise to determine whether or not persons are related parties. This is especially relevant in relation to mandatory tender offers. If one or more persons in a group of persons acting as related parties acquire voting securities as a result of which the group in the aggregate would pass the 33.33% threshold, the members of the group will have a joint obligation to carry out a mandatory tender offer even though the individual group members do not pass the 33.33% threshold.

4. Effecting a Takeover

All public company takeovers in Egypt are effected by way of a public tender offer. There are two main forms of tender offers in Egypt:

- a voluntary tender offer, in which a bidder voluntarily makes an offer for less than 33.33% of its voting securities or shares issued by the target company, including securities issued by the company conferring the right to acquire voting securities of the target company; and
- a mandatory tender offer, which a bidder is required to make if, as a result of an acquisition of the voting securities or shares issued by the target company, including securities issued by the company conferring the right to acquire voting securities of the target company, it crosses (alone or in concert with others) a threshold of 33.33% of the voting securities or shares of the target.

A bidder that intends to launch a tender offer must include in its notification to the FRA a draft information memorandum as well as proof of certain funds from a certified bank in Egypt.

4.1 Voluntary public tender offer

The bidder is free to make the tender offer subject to prior approval by the FRA and certain other conditions precedent, such as a minimum acceptance level or a material adverse change condition.

The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders absent any pre-existing controlling interest in the target:

- The offered price may be paid in cash, securities or a combination of both.
- There is no minimum price for a voluntary tender offer, but the legal rules provide that the terms of the tender offer, including the price, must be such that they could reasonably be expected to allow the tender offer to succeed.

4.2 Mandatory public offer

In all cases, a mandatory tender offer applies to 100% of the ordinary shares, voting rights and convertible securities of the company. A person who wishes to acquire ordinary shares or voting rights, independently or together with related parties, directly or indirectly, will trigger a mandatory tender offer in the following instances:

- If a person acquires one-third or more of the ordinary shares or voting rights of the target company. However, if a person already owns one-third but less than 50% of the share capital or voting rights and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer except if their ownership reaches 50% of the share capital or voting rights of the target company.
- If the ownership of the person reaches 50% or more of the ordinary shares or voting rights of the target company. However, if a person already owns more than 50% but less than two-thirds of the share capital or voting rights and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer except if their ownership reaches two-thirds of the share capital of the target company.
- If the ownership of the person exceeds three-quarters of the ordinary shares or voting rights of the target company, they will trigger a mandatory tender offer. However, if a person already owns two-thirds of the share capital or voting rights but does not exceed three-quarters, and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer.

In all the above instances, if the bidder undertakes to continue listing the company on the EGX, it shall be required to submit a mandatory tender offer for 100% of the ordinary shares, while subtracting 10%, which is the minimum free float required to remain listed on the EGX. In the event that holders representing more than 90% of the ordinary shares accept such tender offer, proration will be applied in order to maintain the 10% minimum requirement. If the bidder wishes to delist the company from the EGX, the mandatory tender offer must cover 100% of the ordinary shares.

The mandatory tender offer is binding and unconditional, save for the conditions set out in step 5.4 of the timeline below related to the minimum targeted number of shares. The main exceptions to the mandatory tender offer obligation include situations where:

- the stake is acquired by a successor;
- the stake is acquired within the framework of a corporate merger;
- the stake is acquired within the framework of sale by a bank of pledged shares in accordance with the provisions of the Egyptian Banking Law;
- there is a group restructuring;
- the stake is acquired by financial institutions licensed to undertake underwriting activities;

- there has been a decrease of capital due to the cancellation of ordinary shares held in treasury;
- all of the company's shareholders have approved the sale;
- there has been a transfer of full ownership of securities owned by a union of employees who are shareholders in the subsidiary companies of state-owned holding companies to restructure such companies and inject additional investments therein; and
- there has been an increase to the share capital in cash or through debt-to-equity swaps provided that such is not due to the purchase of subscription rights.

In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary tender offer. In addition:

(a) If the share of the target company was among the active shares on the EGX, the bidder should consider the following when determining the purchase price:

  - The average closing price of the EGX during the past six months or the average closing price of the company during a period of three months preceding the submission of the tender offer, whichever is higher.
  - The mandatory offer price must be at least equal to the highest price paid by the bidder (or any person acting as related parties with it) during a period of 12 months preceding the submission of the tender offer;

  The aforementioned may be not be considered if the purchase price suggested by the bidder was determined in accordance with a fair value study prepared by an independent financial advisor who is registered with the FRA's register pursuant to the financial valuation standards.

(b) If the share of the target company was not amongst the active shares on EGX, the price shall be determined in accordance with a fair value study prepared by an independent financial advisor who is registered with the FRA's register pursuant to the financial valuation standards.

The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered in an amount corresponding to the cash value of any securities offered as consideration at the time of the filing of the tender offer with the FRA.

The offeror may amend the conditions of the tender offer provided that it does so, at the latest, five business days before the elapse of the tender offer period after obtaining the FRA's approval. The FRA will base its approval on whether such amendments will be to the benefit of the transferors of the securities.

5. Timeline

As a general rule, the tender offer process for a mandatory public tender offer is similar to the process that applies to a voluntary public tender offer, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical mandatory public tender offer process under Egyptian law.

Step

1. Preparatory stage:
   - Negotiations with the target and/or its key shareholders.
   - The bidder approaches the target and/or its key shareholders.
   - The target company and/or its key shareholders disclose the potential offer to the FRA and the EGX immediately after commencement of serious negotiations with the bidder either in writing or verbally. The target company and/or its key shareholders will also need to disclose a potential offer to the FRA and the EGX if it receives a notification from the bidder that it intends to announce a public tender offer or the bidder and the target company and/or its key shareholders sign a memorandum of understanding.
   - Preparation of the bid by the bidder (study, due diligence, financing and draft information memorandum).
   - Bidder to apply for FRA approval with regards to the transaction.
   - The bidder will have to make the necessary filings with the FRA to launch the public tender offer within 60 business days from the date the target company informs the FRA and the EGX of the potential tender offer.

2. Launch of the tender offer:
   - The bidder files the tender offer with the FRA. The filing must contain, among other elements, certain information including the objectives of the bidder, the number and description of the securities that are already owned by the bidder in the target company (whether alone or together with related parties), the proposed purchase price as well as the other main terms of the tender offer.
   - The filing must be accompanied by an information memorandum prepared by the bidder accredited by the legal and financial advisors. The information memorandum must contain information allowing the shareholders of the target company to take a decision regarding the tender offer, including the following:
     - information on the bidder, its related parties and advisers as well as the names of its board members;
     - the duration of the tender offer and its main terms, including the price;
     - the main aspects of the bidder's plans for the 12 months following the successful completion; and
     - the number of securities of the target company that the bidder already directly or indirectly owns.
   - The bidder must represent the accuracy of the information contained in the information memorandum and its advisers must verify the accuracy of such information, including the price valuation.
   - A letter from an Egyptian bank confirming the availability of the bidder's funds for the offer must be submitted to the FRA by the bidder.

Step	
	• The FRA notifies the ECA of the relevant offer if the target company operates in the field of non-banking financial services. If the target company does not operate in the field of non-banking financial services and the applicable anti-trust thresholds under the ECL are triggered, the bidder may need to obtain ECA approval prior to submission of the mandatory tender offer file to the FRA. • Fair value study issued by an independent financial advisor (registered with the FRA's register pursuant to the financial valuation standards) in relation to the shares of the target company involving (i) swaps or a mixed purchase offer (the study should include a detailed list of the swaps shares); and (ii) shares of the target company that are not among the active shares on the EGX. • Obtain preliminary approvals from the competent authorities if required. • Submit average closing prices of the target company for three and six months prior to the filing date of the tender offer with the FRA and prices of tender offers for the same security within the twelve months prior to such date. • The FRA may request any additional information or documentation that it deems fit. • Upon accepting the application, the FRA must notify the EGX of the main terms contained in the application and the information memorandum. Upon such notification, the EGX shall post it on its screens. As of that moment, the bid is public. • Counter tender offer applications may be submitted to the FRA at least five business days before the elapse of the tender offer period. Such counter tender offer application shall not be accepted by the FRA unless (i) the purchase of the securities is for cash, i.e., swap tender offers are not acceptable, (ii) the counter tender offer price is at least 2% higher than the original offer price or (iii) if the counter tender offer contains a material amendment in the tender offer conditions that is for the benefit of the shareholders of the target company.
3.	Validity of the tender offer: • The duration of the tender offer may not be less than 20 business days in cases where the opinion of an independent consultant has been requested and 10 business days in all other cases. In all cases, the duration of the tender offer cannot exceed 30 business days.
4.	Minimum targeted number of shares: • A tender offer may be subject to the acquisition by the offeror of at least 75% of the voting rights of the target company if the acquisition is made for the purposes of a merger, or at least 51% of such voting rights in all other cases. If the FRA grants such an approval and the securities offered for sale are less than the percentage stipulated in the tender offer, the bidder will not be able to implement the transaction unless the FRA approves it.
5.	Within 15 business days from the date that the information regarding the application has been posted on the EGX screens, the board of the target company may issue a statement

Step	
	expressing its opinion on the tender offer and clarifying its viability and importance for the target company.
6.	The review and approval of the application of the bidder by the FRA should be issued within two business days. No publication of the tender offer may be made without first obtaining such approval. Following receipt of the application, the FRA may request additional information and documents, in which case the two-day period in question shall start as of the date when the FRA receives such additional information and documents.
7.	Restrictions during the tender offer: • During the period from the date the FRA approves the application for the tender offer until the publication of the results of such offer, the board of directors of the target company is prohibited from taking any action which may have a material adverse effect on the tender offer. In particular, the board or any of the managers of the target company may not take any decisions for a capital increase or the issuance of bonds if such decision may render the offer impossible or difficult. The board or any of the managers of the target company is also forbidden from taking any action affecting in a material way the base of the target company, increasing its liabilities or obstructing the development of its activities in the future.

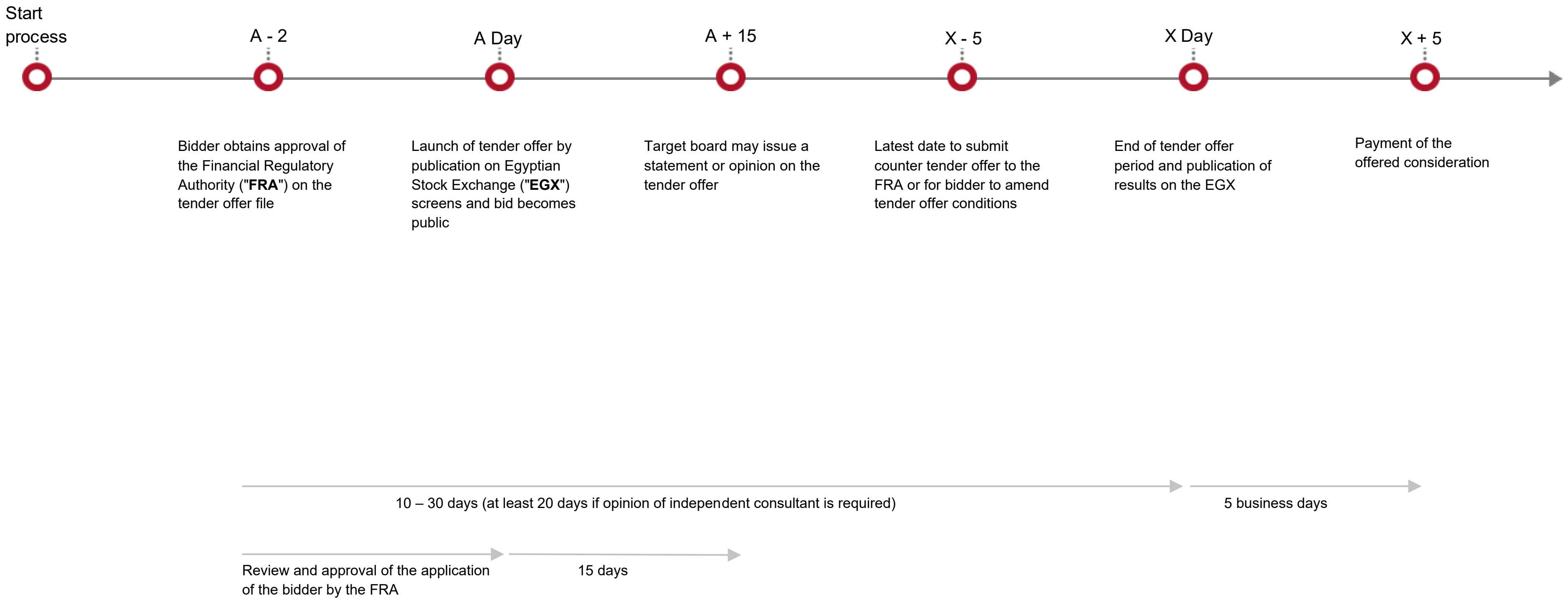
8.	Response memorandum by the target's board:
	• The board of the target company may issue a statement expressing its opinion on the tender offer Within 15 business days from the date that the information regarding the application has been posted on the EGX screens, If (i) the acquisition is to be made by means of a swap of securities or (ii) the securities of the target company are heavily traded and the tender offer price is less than the average price of the securities in the last six months, the target company shall be obliged to issue such a statement.
	• The FRA may require the target company to appoint an independent financial advisor to evaluate the tender offer and provide a report. Such appointment must be approved by a resolution of the Board of Directors, for which voting is limited to independent or expert board members that are not related to the bidder. Such a report may be required by the FRA in the following circumstances:
	  • the bidder (or any of its related parties) already owns 20% of the share capital of the target company;
	  • the bidder is a board member or in the top management of the target company;
	  • the purchase price is in cash or share swaps or a combination of both; or
	  • such other cases where the FRA deems that such report is necessary for the protection of the target company's shareholders and the interests of the market and its stability.
	• The independent financial advisor's evaluation report must be disclosed, at the latest, five business days prior to the expiry of the validity of the tender offer.

Step	
9.	The bidder must notify the target company of the tender offer and provide the information memorandum on the same day as approval is received from the FRA and must publish the tender offer within two business days from the date of approval by the FRA. The means of publication shall be in accordance with the rules and regulations set out by the FRA.
10.	Tender offer amendment and withdrawal: • After receiving the FRA's approval, the bidder may still amend the conditions of the tender offer provided that any such amendment is made at least five days before the elapse of the tender offer period and that the amendments in question are for the benefit of the shareholders of the target company. The amendments must be published in the same manner as the tender offer itself and may not result in an extension of the tender offer period unless otherwise approved by the FRA. • The tender offer may not be withdrawn unless there is a material adverse event and the approval of the head of the FRA has been obtained. The bidder, in such a case, shall not be allowed to submit another tender offer for the period of six months following the date of the withdrawal of the tender offer. Such period is extended to 12 months from the date of withdrawal of tender offer in case of a mandatory tender offer unless otherwise allowed by the FRA based on reasonable grounds.
11.	Execution of the sale orders: • The shareholders of the target company who wish to sell their securities shall submit their sale orders to a brokerage company during the tender offer period. The shareholders may withdraw their sale orders during the tender offer period. The sale orders shall be executed through the EGX system. • The results of the tender offer will be published on the EGX at the end of the tender offer period and the offeror will have to execute the transaction within five days at the latest from the date of the publication of the results of the tender offer on the EGX.
12.	Tender offer price: • The price of the tender offer must reflect the fair value of the shares of the target company. The price offered to all shareholders must be the same. However, in order to protect the minority shareholders, the FRA may, subject to its discretion, request that an independent valuation is made to determine the fair value of the shares of the target company (see section 4.2).
13.	After the elapse of the tender offer period, the EGX should publish the results on its screen and, when relevant, whether or not the bidder waives the conditions precedent to the bid (within the acceptance period).
14.	Undertakings: • The FRA's current practice is to require the offeror to undertake that it will: • comply with Article 8 of the Capital Markets Law concerning disclosure

Step	
	• purchase all shares offered • The template of the information memorandum as prescribed by the FRA requires the bidder to disclose and undertake the following: • any intention to restructure the target company or terminate any of the current employment contracts during the first year following the acquisition; and • any intention to dispose of the acquired shares within the first year following the acquisition.
15.	Payment of the offered consideration by the bidder within five business days of the result being published by the EGX.

Set out below is an overview of the main steps for a mandatory public tender offer in Egypt.

Mandatory public tender offer (indicative timeline)



Start process

A - 2: Bidder obtains approval of the Financial Regulatory Authority ("**FRA**") on the tender offer file

A Day: Launch of tender offer by publication on Egyptian Stock Exchange ("**EGX**") screens and bid becomes public

A + 15: Target board may issue a statement or opinion on the tender offer

X - 5: Latest date to submit counter tender offer to the FRA or for bidder to amend tender offer conditions

X Day: End of tender offer period and publication of results on the EGX

X + 5: Payment of the offered consideration

10 – 30 days (at least 20 days if opinion of independent consultant is required)

5 business days

Review and approval of the application of the bidder by the FRA

15 days

6. Takeover Tactics

6.1 Inside information

An Egyptian company is obligated to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public:

- "Inside information" means any material information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information a reasonable investor would be likely to use as part of the basis of their investment decisions.
- It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

6.2 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Egyptian law is set forth in the Capital Markets Law.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public tender offer, albeit that during a tender offer additional disclosures and restrictions apply in relation to trading in listed securities.

6.3 Common anti-tender offer defense mechanisms

During the period from the date that the FRA approves the application for the tender offer until the publication of the results of such offer, the board of directors of the target company is prohibited from taking any anti-tender offer acts which have a material adverse effect on the tender offer, as summarized in the table below.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase by the board (authorized capital).	The board may not take any decisions for a capital increase or the issuance of bonds if such an increase or issuance, as the case may be, will render the tender offer transaction impossible or difficult, unless such decision was obtained 30 business days before the FRA ratified the tender offer.
2. Share buyback	During the validity of the tender offer, the target company and any of its related parties may not, whether directly or indirectly, purchase securities issued by the target company if such securities

Mechanism	Assessment and considerations
Share buyback "with a view to avoid an imminent and serious harm" to the company.	constitute a part of the capital or give a right to own a part of the capital However, the target company may buy back shares during the validity of the tender offer if such purchase is in execution of a company's general meeting resolution which was issued on a date earlier than the date on which the FRA ratified the draft of the tender offer and the memorandum of information.
3. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	The board of directors of the target company is prohibited from taking any action affecting in a material way the target company, increasing its liabilities or obstructing the development of its activities in the future, unless these actions are in the normal course of business of the target company and on a date before the FRA's ratification on the tender offer and the memorandum of information.

7. Squeeze-out of Minority Shareholders after Completion of the Tender Offer

The Capital Markets Law does not grant any squeeze-out rights to majority shareholders. However, if a person and its related parties control 90% or more of the company's shares and voting securities, shareholders owning 3% or more of the shares or a minimum of 100 shareholders representing 2% of the free float shares, may, within 12 months from such ownership threshold being reached, request the FRA to oblige the majority shareholder to submit a mandatory tender offer for the minority shares.

8. Delisting

As a rule, the EGX may oppose a delisting of an Egyptian company that is listed on the EGX in the interest of protecting investors.

The EGX may also oppose a delisting in the following circumstances:

- if registration was effected based on false information that affects the validity of listing;
- if the company does not comply with the disclosure rules, subject to a one-month compliance notice by the EGX;
- if the foreign shares corresponding to locally listed depository receipts have been canceled;
- in the event that six consecutive months have lapsed without a transaction in the shares being effected. Transactions would not include disposal of shares between related parties;
- if the company did not pay the required listing fees;
- if the company does not comply with any listing conditions that are rectifiable in nature, provided that the company did not rectify such condition within the time limit determined by the EGX; or
- if the company violates any non-rectifiable listing rules twice within any 12-month period.

In addition to the above circumstances, the EGX shall have the right to delist any company that has violated the minimum threshold for net profits and equity rights for two consecutive years following its listing.

9. Contacts within Baker McKenzie

Mohamed Ghannam and Hani Nassef in the Cairo office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Egypt.

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The following summary is for informational purposes only and may not reflect the most current legal and regulatory developments. This summary is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Similarly, it does not address any aspects of the laws of jurisdictions outside the specific jurisdiction described, to which a company may be subject. **All information in this summary is subject to change and, unless otherwise noted, is current only as of 1 January 2025.**

1. Overview

In 2023 (last available data) there were 23 public takeover bids in France compared to 32 in 2022 and 43 in 2021. The total value of shares acquired in takeover bids fell from €15.6 billion in 2022 to €9.5 billion in 2023. Almost all of the public takeover bids were negotiated transactions in 2023.

The rules hereinafter described are those applicable on Euronext Paris which is the main trading venue of the Paris market place and qualifies as a regulated market within the meaning of the Directive 2014/65/EU of the European Parliament and Council of 15 May 2014 on markets in financial instruments (MIFID II). Rules applicable with respect to takeover bids for companies listed on other French trading venues, such as Euronext Growth for small and medium companies, differ in several respects from the rules hereinafter described.

2. General Legal Framework

The main body of the French takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). The Takeover Directive has harmonized the European public takeover bids legislation applicable to the different Member States of the European Economic Area (EEA). However, the Takeover Directive still allows Member States to maintain domestic specificities in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids. The Takeover Directive was implemented into French law in 2006.

2.1 Main legal framework

The main rules and principles of French law relating to public takeover bids are based on the Takeover Directive and set forth in:

- the Monetary and Financial Code;
- the Commercial Code;
- the *Autorité des marchés* financiers General Regulation (and Implementing Instructions); and
- the rules and regulations of the market operator applicable to the relevant financial market (Euronext Paris).

While the aforementioned legislation contains the main legal framework for public takeover bids in France, a number of additional rules and principles must be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended by Directive 2013/50/EU ("**Transparency Directive**"). For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are set forth by the Market Abuse Regulation (EU) No 596/2014 as of 16 April 2014 ("**Market Abuse Regulation**"). For further information, see 6.3 below.

(c) The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are based on Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading ("**Prospectus Regulation**"). These rules and regulations are not further discussed herein.

(d) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.2 Supervision and enforcement by the *Autorité des marchés financiers*

Public takeover bids are subject to the supervision and control of the French stock exchange authority, the *Autorité des marchés financiers* ("**AMF**"), which is the principal securities regulator in France.

The AMF has a number of legal tools that it can use to supervise and enforce compliance with public takeover bid rules, including administrative fines (as further described below). The AMF also has the power to grant (in certain cases described below) exemptions from the rules that would otherwise apply to a public takeover bid.

2.3 General principles

The following general principles apply to public takeovers in France:

(a) all holders of the securities of a target company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) a bidder must announce a bid only after ensuring that he/ she can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

Besides these general principles contained in the Takeover Directive, the AMF also refers to the following principles to impose fairness in the offer process. These must be complied with consistently by the bidder(s) throughout the offer process:

- equal treatment and information for all shareholders;
- market transparency and integrity;
- fairness of transactions and competition among bidders; and
- a level playing field between competing bidders.

2.4 Modifications and proposed changes

- <u>Squeeze-out</u>: The "Pacte" Law enacted on 22 May 2019, lowered the squeeze-out threshold from 95% to 90%. Before that, only a shareholder that held, alone or in concert, at least 95% of the share capital and voting rights of a listed company (see 4.3 below) was allowed to squeeze-out minority shareholders. The "Pacte" law lowers this threshold to 90% of the share capital <u>and</u> voting rights of the target company in order to align French law with the laws of other main EU jurisdictions and facilitate public-to-private transactions.

- <u>Foreign investments</u>: The "Pacte" Law, Decree 2019-1590 and a related order (*arrêté*) dated 31 December 2019, as well as Decree n°2023-1293 dated 28 December 2023, reinforced French foreign investment regulations (see 2.5 below). The reforms (i) extend the list of industries where acquisitions by non-French investors are subject to the prior approval of the French Ministry of Economy, (ii) change the timeline for obtaining a prior authorization from the French Ministry of Economy, and (iii) substantially increase the list of information and documentation to be provided as part of a prior authorization application.

- <u>Independent expertise</u>: In February 2020, the AMF amended its General Regulation with respect to the independent expertise to be issued in negotiated takeovers. The changes are essentially aimed at strengthening the protection of minority shareholders and reinforcing the independence of the independent expert in charge of issuing the fairness opinion. The reform is a response to public takeover offers by controlling shareholders where the diligence procedures of the target's board and the independent expert had been subject to much criticism.

2.5 Governmental prior approval - Foreign investments regulation

Foreign investments are not restricted in France and are only subject to reporting upon completion (as opposed to prior authorization), unless they relate to certain specific sensitive activities.

The purchase by a foreign investor of a direct or indirect controlling interest in a French public company conducting sensitive activities requires the prior approval of the French Ministry of Economy, i.e., before completion of the transaction.

In relation to non-French investors incorporated in the EEA, such provision is triggered by the acquisition of the control, alone, jointly or in concert, within the meaning of article L.233-3 of the French commercial code. Pursuant to this provision, acquisition of control includes not only the crossing of the 50% threshold in voting rights but also the acquisition of a "deemed" control pursuant to contractual arrangements and a "de facto" control of the shareholders meetings.

For non-EEA investors, in addition to the foregoing, any crossing, alone or in concert, of the threshold of 10% of the voting rights in a company whose securities are admitted to trading on a regulated market, such as Euronext Paris, is also subject to the prior approval of the French Ministry of Economy.

The following are considered sensitive activities:

- gambling sectors (with the exception of casinos);
- private security regulated services;
- activities aimed at fighting the illegal use, in connection with terrorist activities, of pathogenic and toxic substances and preventing the health consequences of such use;
- activities related to equipment used for intercepting communication and remote detection of conversations;
- activities relating to evaluation and certification of security of information technology products and systems;
- goods or services relating to security in the information systems' security sector;
- activities relating to goods and technologies that may have a dual purpose, e.g., civil and military;
- activities relating to the means of cryptology and services of cryptology;
- company activities related to national defense secrets;
- activities relating to research into, production or trade of weapons, ammunition, powder and explosive substances;
- activities conducted by a company that has entered into a study agreement or a supply agreement with the French Ministry of Defense (directly or by sub-contracting) in order to conduct activities relating to goods and technologies for dual use or research, manufacture or sale of arms or weapons; and
- activities related to data hosting whose jeopardizing or disclosure is likely to harm the exercise of activities or interests;
- other activities relating to equipment and products or services that are essential to guarantee French national interests in terms of public policy, public security or national defense, as listed below:
  - energy;
  - water supply;

  - transportation networks and services;
  - space operations;
  - electronic communication networks and services;
  - installations, facilities or structures of vital importance;
  - public health and biotechnologies;
  - low-carbon technologies and photonics;
  - infrastructure, goods and services essential to the extraction, processing and recycling of critical raw material; and
  - guaranteeing the security of prisons.
- activities related to production, processing or distribution of agricultural products when these contribute to national food security;
- activities related to editing, printing or distribution of press publications of political and general information relating to the status of group companies and distribution of newspapers and periodical publications, and online press services of political and general information;
- activities of research and development of means to be implemented relating to the sectors listed below:
  - cybersecurity;
  - artificial intelligence;
  - robotics;
  - additive manufacturing;
  - semiconductors;
  - quantum technology;
  - energy storage;
  - dual-use items and technologies; and
  - technologies involved in renewable energy production.

The approval process is in two-phases:

(a) an initial phase of up to 30 business days from the receipt by the French Ministry of Economy of the authorization request, during which time the French Ministry of Economy will provide its position on whether the proposed investment is (i) out of scope of the foreign investments regulation, (ii) in scope and unconditionally authorized or (iii) in scope and requiring further analysis to determine under what conditions it could be authorized; and

(b) if during the initial phase the French Ministry of Economy determines that it requires further analysis to ensure that the preservation of national interests may be guaranteed by granting an authorization under condition(s), it will have a further period of up to 45 business days to provide its position.

If the French Ministry of Economy does not provide its position by the expiry of either phase, the prior authorization request will be deemed refused.

2.6 Information of the target company's employees - the "Hamon Law Information"

A law of 31 July 2014 ("**Hamon Law**"), revised by a law of 6 August 2015, introduced a "prior information right of the employees in case of sale of business" (*droit d'information préalable des salaries en cas de vente d'une entreprise*) into French law.

The Hamon Law established an obligation for the owner of a block of shares representing more than 50% of the share capital of a target company to notify the management of the target company of its intention to transfer the control of the target company so that each of the employees of the target company (but not of the subsidiaries thereof) is informed of such proposed sale and may bid for the acquisition of the block of shares to be transferred. For the avoidance of doubt, the employees do not have any priority right over the shares to be transferred under the Hamon Law.

The employees must be informed individually of the proposed sale prior to the signing of any share purchase agreement.

Where the proposed sale is subject to prior consultation with the works council (*comité social et économique*) of the target company, the information process is conducted simultaneously with the consultation and cannot adversely affect the timetable of the transaction.

It should be noted that most public M&A transactions involving French target companies are not subject to such an obligation since it is applicable only where (i) the acquired block of shares represents more than 50% of the total number of the shares, and (ii) the target company:

(a) employs less than 250 persons; and

(b) has an annual turnover exceeding EUR 50 million or a balance sheet exceeding EUR 43 million.

In addition, the Hamon Law only applies to public M&A transactions involving the sale of a controlling block of shares. Voluntary public takeover bids are not subject to the Hamon Law.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a French listed corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The ability at a general shareholders' meeting to block any decision that must be taken unanimously, such as: ◦ relocation of the registered office outside of France (except if the target company is incorporated as a SE

Shareholding	Rights
	(*Societas Europaea*) and relocated with the European Union); • increase in the shareholders' obligations towards the company, e.g., increase of the share par value, change of the corporate form into an unlimited liability form, etc.; and • change of the corporate form into a simplified joint-stock company (*société par actions simplifiée*). • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting or in writing prior to the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons.
5%	• The right to submit questions to the management regarding any matter which may compromise the operations of the company, twice a year, at any time. • The right to petition a court to appoint an expert to establish a report on one or more operations of the management. • The right to request the addition of new items on the agenda and draft resolutions in relation to a general shareholders' meeting. The shareholding required to make such request gradually decreases from 5% for target companies whose share capital is above EUR 750,000. • The right to petition a court to appoint an agent to convene a general shareholders' meeting.
$33^{1}/_{3}$% + one share	The ability at a general shareholders' meeting to block resolutions of the extraordinary general shareholders' meeting's competence, which are the following: • any changes to the articles of association; • mergers and/or de-mergers; • capital increases and/or capital reductions; • change of the corporate form; • issue of new shares and/or any equity securities (including, but not limited to, convertible bonds, mandatory convertible bonds and warrants); • issue/allocation of stock options or RSUs;

Shareholding	Rights
	• relocation of the registered office in another district (*département*) (other than an adjacent district); • dissolution of the company or extension of its term; • any change in the rights attached to the shares, including, but not limited to, the introduction of a double voting right or the creation of a new class of shares; • the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or warrants; and • any other amendments to the articles of association. Given that the outcome of a vote on a resolution at a general shareholders' meeting is determined based only on the total number of votes cast by shareholders participating in the meeting (physically, by mail or by proxy) without counting the voting rights held by the non-participating shareholders, the level of shareholding required to block a resolution is usually less than 331/3% in practice.
50% + one share	The ability at a general shareholders' meeting to pass resolutions of the ordinary general meeting's competence, which are the following: • approve the annual standalone and consolidated financial statements; • decide a dividend and any other exceptional distribution (reserves and premium); • appoint and dismiss directors; • approve the remuneration policy and the individual remuneration of the executive corporate officers; • appoint the statutory auditors; • decide a share buy-back program; • approve the related party agreements entered into by the company; • ratify the relocation of the registered office within the same district or an adjacent district (as decided by the board of directors); and • take decisions for which no special majority is required. For the reasons set out above, the level of shareholding required to block a resolution is usually less than 50% in practice.

Shareholding	Rights
66$^{2}/_{3}$%	The ability at a general shareholders' meeting to pass resolutions of the extraordinary general meeting's competence, as listed above.
90%	The ability to implement a "squeeze- out" (*retrait obligatoire*) of the minority shareholders following a takeover offer, and subsequently delist the company from Euronext Paris.

3.2 Restrictions and careful planning

French law contains a number of rules that apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by an bidder, announcements of a potential takeover bid by the target company or the bidder prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing

Before, during and after a takeover bid, the normal rules regarding insider dealing and more broadly market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below.

Prior to the announcement of the offer, the bidder is not prohibited from trading the target's shares subject to the general principles governing offers and insider trading rules.

The knowledge by the bidder of its offer is not regarded as an obstacle to the bidder acquiring shares of the target company but under certain circumstances, such acquisitions may be challenged by the AMF for being allegedly in breach of the general principles governing public takeover offers (in particular, market integrity). Any bidder having access to a data room opened by the target would, in any event, be deemed an "insider" and thus prohibited from acquiring the target's shares in the market.

During the pre-offer period, i.e., from the announcement of the offer until the filing of the offer, the bidder is prohibited from buying the target's shares.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake in the share capital or that the voting rights attached to this stake have crossed a disclosure threshold. Such threshold crossings should be reported to both the AMF and the company.

The relevant disclosure thresholds in France are 5%, 10%, 15%, 20%, 25%, 30%, 33$^{1}/_{3}$%, 50%, 66$^{2}/_{3}$%, 90% and 95%. Several listed companies also apply a lower threshold than the initial threshold of 5% (0.5% in most cases), with disclosure to the company having to be made at each crossing of a multiple of said initial threshold (1%, 1.5%, etc.). It should be noted that the disclosure must be made regardless of the direction of the crossing (either upwards or downwards).

In addition, any crossing of the shareholding threshold of 10%, 15%, 20% or 25%, either in voting rights or in share capital, triggers the additional obligation to disclose, to the AMF and the target company, a description of the objectives intended to be pursued by the stake builder with respect to the company for the subsequent six months, within five trading days of the crossing of the threshold. Such declaration of intent must disclose, among other things, whether the shareholder is acting alone or in concert, whether or not it seeks to purchase additional securities of the company, whether or not it intends to obtain corporate control and whether or not it intends to request the appointment of board members.

When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert (see 3.9 below) and any other assimilated shares under French rules (including shares subject to a call option of which it is the beneficiary).

3.5 Disclosures by the target company

The target company must comply with the general rules regarding disclosure and transparency throughout the takeover process. In particular, as a listed company, it must immediately disclose any inside information under Market Abuse Regulation. For further information on inside information, see 6.1 below.

The negotiation of a public takeover bid may constitute inside information. If so, the target company must disclose it. However, the management of the target company can (and usually does) delay disclosure on the ground of the legitimate interest of the company (arguing that early disclosure would prejudice the negotiations regarding a bid). A delay of the announcement, however, is only permitted if such non-disclosure does not mislead the public and the company can keep the relevant information confidential. The company's management may be held liable for delaying disclosure if considered unlawful.

3.6 Announcements of a public takeover bid

Any bidder contemplating a transaction that may have a material impact on the market price of a stock (such as a takeover offer) must state its intents and disclose the main terms of the contemplated transaction as soon as possible.

The bidder may postpone the disclosure at its own risk provided confidentiality is maintained. In case of a friendly offer, confidentiality is secured by a non-disclosure agreement between the bidder and the target / its shareholders covering the existence and content of the on-going negotiations and the information exchanged between the parties

As soon as a bidder makes the terms of a potential offer public, it must immediately inform the AMF. The AMF will subsequently post a notice on its website, which starts the pre-offer period during which share dealing restrictions apply to the bidder.

If there are rumors or leaks that a potential bidder intends to launch a public takeover bid, the AMF could force such potential bidder to disclose its intentions. This mechanism could lead to an early disclosure and accelerate the bidder's preparations. It is therefore recommended to prepare a "leak strategy" to be in a position to react immediately in the event of unexpected leaks. For further information, see 3.7 below.

3.7 Early disclosures – Put-up or shut-up

(a) Early disclosure required by the AMF – The AMF may require any person making statements either personally or via intermediaries that raise questions with the public as to such person's intentions regarding a potential public takeover bid to disclose its intentions within a time period set by the AMF. The disclosure must typically be made within a couple of trading days.

(b) Put-up or shut-up – In addition to the foregoing rule, the AMF is entitled to force a person to make an announcement as to whether or not it intends to carry out a public takeover bid under certain circumstances. The relevant rules, inspired by the UK rules, can be summarized as follows:

- The AMF can require an announcement by a suspected bidder if it has reason to believe that it is preparing a takeover bid (for example, in the event of market rumors), and particularly where the market for the securities of the issuer shows significant price volatility or unusual trading.
- In requiring such announcement, the AMF can impose a window of time within which the announcement must be made, typically a couple of trading days.
- A person that confirms their intention to launch a public takeover bid must launch such takeover bid within the term agreed by the AMF (usually between 15 and 20 trading days).
- If a person denies its intention to launch a public takeover or does not confirm its intention to launch a bid within the term imposed by the AMF, it (and the persons acting in concert with them) will be prevented from launching a takeover bid for the securities of the target company for a period of six months following the publication of such announcement (or the expiry of the term imposed by the AMF to make such announcement), unless the circumstances, the situation of the target company or the shareholding of the entities concerned have substantially changed.

3.8 Due diligence

The French public takeover bid rules do not contain specific rules regarding the question of whether or not a prior due diligence can be organized or how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted, including by the AMF as well, and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures and data rooms.

The due diligence process will vary depending on the type of bid.

In a friendly offer, the bidder is given access to a data room containing non-public information, subject to the display of a "serious interest" expressed by the bidder for the transaction and the execution of a letter of intent as defined by AMF Regulation n° 2016-08. In accordance with the level playing field rule, if there are any competing bids, the target is required to allow any competing bidder to have access to the same level of non-confidential information as the initial bidder, subject to antitrust considerations as the case may be. The offer documentation must state whether or not a data room was put in place. In addition, any material non-public information made available in the data room must be disclosed in the offer document made public by the bidder in order to provide shareholders with the same level of information, which in practice restricts the content of the data room in public M&A transactions.

In a hostile offer, the bidder will usually need to rely on publicly available documents, as the target company will not allow it to have access to a data room. The most comprehensive document is the universal registration document (*document d'enregistrement universel*) disclosed every year by most

French public companies listed on Euronext Paris, which can be found on their website. Regulated information (permanent and periodic disclosures) made public by French public companies in accordance with the Transparency Directive, as implemented into French law, are also available on their website. Corporate documents (certificate of incorporation (*K-bis*), by-laws, security interests, bankruptcy filings) are available from clerks of competent commercial courts.

3.9 Acting in concert

Under French corporate law, persons "act in concert" if they enter into an oral or written agreement to acquire, sell or exercise voting rights aimed at implementing a common policy relating to the company or to acquire control over the company.

Such agreement is deemed to be existing:

- between a company, its chairman and its general managers (*directeurs généraux*). Depending on the corporate form of the company, instead of the chairman and the general managers, the officers to be considered acting in concert with the company would be the members of the managing committee (*directoire*) or the managers (*gérants*);
- between the company and the company it controls under the meaning given to control by French law;
- between companies controlled by the same person;
- between the shareholders of a simplified joint stock company (*société par actions simplifiée*), towards the companies that such company controls; and
- between the trustee (*fiduciaire*) and the beneficiary (*bénéficiaire*) of a fiduciary contract (*contrat de fiducie*), where the beneficiary is also the settlor (*constituant*).

For the purpose of the French takeover bid rules, the persons who enter into an agreement with the initiator of a takeover bid aimed at acquiring control of the target company are considered to be acting in concert. Persons who enter into an agreement with the target company aimed at preventing the takeover bid are also considered to be acting in concert.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquires voting securities as a result of which the group in the aggregate would pass the 30% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 30% threshold.

4. Effecting a Takeover

There are two main forms of takeover bids in France:

- a voluntary takeover bid in which a bidder voluntarily makes an offer for all the shares issued by the target company (and all the securities issued by the target company conferring the right to acquire its shares, regardless of whether or not they are listed but provided that they are transferable); and
- a mandatory takeover bid that a bidder is required to make if, as a result of an acquisition of securities, a shareholder crosses (alone or in concert with others) a threshold of 30% of share capital or voting rights of the target company, or if it increases, within 12 consecutive months, its shareholding by more than 1% in shares

or voting rights while holding a shareholding between 30% and 50% in shares or voting rights.

Both forms of takeover bids can be followed by a squeeze-out bid whereby a shareholder holding 90% of the share capital and voting rights of a company governed by French law can squeeze out the remaining holders of voting securities.

A bidder that intends to launch a takeover bid must appoint a presenting bank in order to guarantee the offer consideration. Unlike most EU jurisdictions, there is no regulatory or stock exchange requirement for debt financing to be provided on a certain-fund basis but the presenting bank usually requires the benefit of a cash guarantee or any other back- to-back guarantee. Only financial intermediaries authorized to provide the investment service of underwriting in France are allowed to act as presenting banks.

4.1 Voluntary public takeover bid

- Offers must be unconditional and irrevocable. The bidder is, however, free to make the takeover bid subject to merger control clearance, a minimum acceptance level (the statutory success threshold is 50% + one share but the bidder can set a higher threshold within the limit of $66^2/_3$%), governmental approval and approval of the bidder's shareholders. No other condition precedent such as financing, achieving the squeeze-out threshold or absence of a material adverse event are allowed.
- The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):
    - The offered price may be paid in cash, securities or a combination of both. However, such securities have to be (i) regarded as liquid by the AMF and (ii) listed or admitted to trading on a regulated market in one of the EU or EEA member states for the takeover bid to be approved. As a result, where the bidder which is offering consideration in the form of securities is from outside the EU or EEA, it must seek a listing in the EU or EEA (preferably in France, failing which the AMF usually requires the implementation of a sale facility to allow the former shareholders of the target to promptly dispose of their newly-received securities following the settlement of the operation at no cost) for the securities it plans to offer as consideration. This will require the preparation of a prospectus. If the offered securities do not meet these conditions, the bidder must offer a cash alternative to all the target company shareholders. The bid may also provide for a choice or a mix of alternative consideration, i.e., cash and/or securities at the option of the target company's shareholders and/or within the limits set by the bidder.
    - If the bidder or persons acting in concert with the bidder have acquired securities giving access to more than 5% of the share capital or the voting rights of the target company for cash, they will have to offer an unlimited cash alternative to the target company's shareholders as part of the takeover bid.
    - There is no minimum price for a voluntary takeover bid. The offer price may be set at the discretion of the bidder and is not subject to the approval of the AMF. The AMF will, however, systematically ensure that (i) the offer price complies with the general principles governing public offers (including, in particular, equal treatment of all shareholders and the fairness of transactions among bidders), and (ii) the information with respect to the offer price

disclosed in the offer document, particularly the valuation, and in the fairness opinion is complete and coherent.

- The target's board must appoint, on the proposal of an *ad hoc* committee composed of at least three members and including a majority of independent members, an independent expert to deliver a fairness opinion for transactions which are likely to raise a conflict of interest or interfere with the equal treatment of the holders of the targeted securities. Independent experts are, in practice, more often "boutique" financial or accounting experts rather than mainstream banks.
- If there are different categories of securities, different prices for each category can only be based on the characteristics of such categories.
- If, during a 12-month period preceding the takeover bid period (starting on the date of the formal offer notice to the AMF), the bidder or persons acting in concert with the bidder have acquired securities to which the takeover bid relates, then the offered price must be at least equal to the highest price paid during this period. However, the AMF may request or authorize the amendment of the proposed price if this is justified by a manifest change in the target company's characteristics or in the market for its securities.
- A competing bid may be filed no later than five trading days before the closing date of the acceptance period. An all-cash competing offer will only be declared compliant by the AMF if it is made at a price that is at least equal to 102% of the price offered.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered under the following alternative conditions:
    - a person or a group of persons acting in concert acquire 30% or more of the share capital or voting rights of the target company;
    - a person or a group of persons acting in concert holding between 30% and 50% of the total number of shares or voting rights of the target company increases its shareholding by more than 1% of the total number of shares or voting rights of the target company within a 12-month period; or
    - if the AMF requires it, when a person or a group of persons acting in concert controlling a listed company decides to dispose of the majority of the assets of this company. The disposal is also subject to prior consultation of the ordinary shareholders' general meeting of the company.
- The mandatory takeover bid must be unconditional and no condition precedent is allowed, subject to the legal condition of the minimum acceptance level, see below.
- The mandatory takeover bid must be filed with the AMF within a reasonable period of time from the triggering event, i.e., up to 4-6 weeks in practice.
- If there is a failure to file a mandatory takeover bid complying with applicable requirements, the shares in excess of the 30% threshold will be automatically deprived of voting rights and the AMF may request the issuance by a court of an injunction to file the mandatory takeover bid.
- The AMF may grant an exemption from the requirement to conduct a mandatory takeover bid in certain situations. However, the AMF has a discretionary power to

refuse to grant an exemption. A key factor in its decision making is the impact of the transaction on the minority shareholders. The main exceptions to the takeover bid obligation include situations where:

  - the 30% threshold is crossed by a shareholder acting in concert with either:
    - a person (or a group of persons acting in concert) holding the majority of the target company's share capital or voting rights, provided that such shareholder(s) remain(s) predominant in the group acting in concert; or
    - a person (or a group of persons acting in concert) holding between 30% and 50% of the target company's share capital or voting rights, provided that (i) such shareholder(s) maintain(s) a larger holding than the shareholder joining the group acting in concert, and (ii) such shareholder(s) do(es) not cross either of the triggering thresholds of 30% or 1% over a 12-month period. However, only the latter threshold (1% over 12 months) is actually applicable since the group already holds more than 30% of the target company's shares or voting rights;
  - the threshold (30% or 1% over a 12-month period) is crossed temporarily, i.e., where the crossing results from a transaction that is not intended to gain or increase control of the company and lasts no longer than six months, provided that the person (or a group of persons acting in concert) crossing the threshold undertakes not to exercise the corresponding voting rights (exceeding the threshold) prior to the resale of the relevant block;
  - the gratuitous transfer of securities between individuals;
  - the block is acquired within the framework of a subscription to a capital increase with preferential subscription rights for the shareholders that has been decided upon by the general shareholders' meeting, i.e., a rights offering;
  - the block is acquired within the framework of a subscription to a capital increase by a target company in financial difficulties that has been decided upon by the general shareholders' meeting;
  - the involuntary crossing of the threshold, i.e., reduction of the total number of shares or voting rights of the company;
  - the block is acquired by a person (or a group of persons acting in concert) holding more than 50% of the share capital or voting rights of the target company;
  - the block is acquired within the framework of an acquisition of control, merger or contribution of a company (i) which directly or indirectly holds more than 30% of the target, and (ii) of which the target does not constitute an essential asset; and
  - the block is sold or otherwise disposed to individuals or companies belonging to the same group.

- In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary takeover bid. In addition:
  - The mandatory offer price must at least equal either:

    - the highest price paid by the bidder (or any person acting in concert with it) during a period of 12 months preceding the triggering event of the takeover bid, i.e., threshold crossing; or
    - absent such previous transaction in the preceding 12 months, the minimum price is set according to a multicriteria valuation.
- The AMF may either increase or decrease the minimum price in the event of a significant change in the characteristics of the target or the market for its securities, such as:
    - an event materially altering the value of the target company that occurred over the previous 12 months;
    - the target company being distressed;
    - the reference price relates to a complex transaction, i.e., including specific covenants and representations and warranties.
- Whenever an independent expert must be appointed, the AMF will review the offer price in light of the fairness opinion.
- The consideration offered must consist of cash.
- The legal minimum acceptance threshold is 50% of the total number of shares or voting rights of the target company. If this minimum level is not reached, the bid lapses with the following consequences:
    - the voting rights attached to the shares held by the bidder in excess of the 30% threshold (or in excess of the shareholding of the bidder prior to the offer where it was already holding between 30% and 50% of the target's share capital or voting rights) are suspended;
    - the bidder is no longer permitted to acquire any shares in the target company (even within the limit of 1%) unless it informs the AMF and initiates a new takeover bid; and
    - the suspended voting rights are only reinstated in the event that the new offer is successful, i.e., it reaches the 50% minimum threshold.

4.3 Follow-on squeeze-out and delisting

Following a successful takeover bid, a bidder will be able to squeeze out the residual minority shareholders if it holds, alone or in concert with others, at least 90% of the share capital and voting rights of the target company. The squeeze-out is effected at the price offered in the takeover bid. In order to effect a follow-on squeeze-out, the bidder should reserve the right to do so in its takeover bid (see 7.1 below).

Concurrently with the completion of the squeeze-out, the shares of the target company will be delisted from Euronext Paris.

5. Timeline

5.1 Friendly normal procedure

The table below contains a summarized overview of the main steps of a typical voluntary friendly public takeover bid process under French law (without pre-bid acquisition of shares).

When the public takeover bid process is preceded by the acquisition by the bidder of a block of shares representing more than 50% of the shares and voting rights of the target company, a so-called "simplified procedure" will apply with certain significant discrepancies that are discussed in 5.2. below.

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft offer document). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders. • Signing of an exclusivity agreement with the target and commitment to tender by some key shareholders. • Announcement of the transaction.
2.	Target company's works council: • Consultation of the target company's works council (which has no veto right)
3.	Launching of the bid: • Signature of the combination agreement by the bidder and the target company. • Appointment of the ad hoc committee (composed of a majority of independent directors) within the board of directors of the target. • Appointment of the independent expert (if necessary) by the board of directors of the target. • The bidder files the preliminary offer document with the AMF (this filing is often simultaneous with the filing of the preliminary response document by the target).
4.	Responses from the target company: • The board of the target company issues its opinion on the bid. • The target company files the preliminary response document with the AMF (containing the opinions of the works council and the board).
5.	Review by the AMF: • The AMF reviews and approves the offer document of the bidder. • The AMF reviews and approves the response document of the target company.
6.	Within two trading days of the approval of the bid by the AMF, publication of the final documents (offer document and response document) and filing of the information documents regarding the bidder and the target company.

Step	
7.	Launch of the acceptance period: • Start: the next trading day after step 6 above. • Duration: 25 trading days for the normal procedure.
8.	Publication of results (within nine business days of the end of the acceptance period).
9.	Payment of the offered consideration by the bidder (typically three to five business days after publication of the result).
10.	Re-opening of bid if the bid was successful, i.e., if the minimum level threshold was reached: • Start: within 10 business days following publication of results. • Duration: not less than 10 business days. There may be no re-opening of the bid if the bidder has reached the 90% threshold (both in shares and voting rights) and launches a squeeze-out procedure.
11.	Publication of results of the re-opened offer (within nine business days of the end of the re-opened acceptance period).
12.	Payment of the offered consideration by the bidder (typically three to five business days after publication of the result of the re-opened offer).
13.	Squeeze-out: (if the bidder acquired at least 90% of the share capital and voting rights of the target company as a result of either the acceptance period or the re-opened acceptance period, at any time within the next three-month period, the bidder may enforce a squeeze-out of the minority shareholders by notifying the AMF accordingly and making the appropriate disclosure under the conditions set forth in 7.1 below). The squeeze-out is typically completed within a few business days from the AMF notification.

Set out below is an overview of the main steps for a friendly public takeover bid in France.

Friendly public takeover bid (indicative timeline for a standard procedure*)

Announcement	Signing of the exclusivity agreement followed by announcement of the transaction
A Day	Signing of the combination agreement Appointment of the independent expert by the target's board
A + 20	Bidder and target disclose and file with the AMF, respectively, the offer document and the response document (including the report of the independent expert)
D	AMF approves offer document and response document and makes them public
D + 1	Bidder and target file with the AMF and make public the documents presenting their legal, financial and accounting characteristics (information documents)
D + 2	Opening of acceptance period
D + 26	End of acceptance period
D + 35	Publication of results
D + 40	Payment of the offered consideration
D + 41	Re-opening of bid if the bid was successful, i.e., if 50% minimum level threshold reached
D + 50	End of re-opened acceptance period
D + 59	Publication of results
D + 64	Payment of the offered consideration
D + 26 + 3 months	Squeeze-out and delisting (subject to the bidder holding more than 90% of the target both in shares and voting rights)

Consultation of the target's works council

Less than 1 month (subject to exemptions)

Minimum of 20 trading days for the expert's review

AMF review period (at least 5 trading days – generally 10-15 calendar days)

25 trading days for normal procedure (can be extended to 35 trading days) / 10 trading days for simplified procedure

Within 9 trading days

3 - 5 trading days

Within 10 trading days (but usually immediately following payment of the consideration)

Minimum 10 trading days

Within 9 trading days of the end of the re-opened acceptance period

3 - 5 trading days

Within 3 months following close of offer

* Periods referred to in the timeline are expressed in trading days unless otherwise stated

5.2 Friendly simplified procedure

If the bidder holds more than 50% of the shares and voting rights of the target company prior to the bid, for example as a result of a pre-bid acquisition, the takeover bid will be entitled to a simplified procedure. Two key differences to highlight compared to the normal procedure are:

- The target company must wait for the expiry of a 15-trading day period to file its draft response document with the AMF, i.e., the initial filing by the bidder and the target cannot be simultaneous. The purpose is to allow the board of the target to address the concerns raised by the minority shareholders in the response document.
- The acceptance period minimum duration is 10 business days (and not 25 business days).

6. Takeover Tactics

6.1 Inside information

Inside information is governed by the Market Abuse Regulation which is directly applicable in France.

A French listed company is obligated to immediately disclose all of its "inside information" to the public.

- "Inside information" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "*precise nature*" if it indicates a set of circumstances or an event which occurred or may reasonably be expected to occur and if it enables a conclusion to be drawn regarding the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instruments.
- "*Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments*" shall mean information a reasonable investor would be likely to use as part of the basis of his/her investment decisions.

Disclosure may be delayed if the company considers that it is in its legitimate interests and provided confidentiality may be maintained. The company must promptly inform the AMF of any such delay following the actual disclosure and retain a record of how it determined that the delay in disclosure was in its legitimate interests.

It is up to the target company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the bidder is not required to inform the target company or the public prior to filing the takeover bid documentation with the AMF, provided that such non-disclosure is necessary to the preparation of the transaction and that secrecy can be maintained.

6.3 Insider dealing and market abuse

Insider dealing and market abuse are governed by the Market Abuse Regulation which is directly applicable in France. Other applicable rules are set forth in both the Monetary and Financial Code and the AMF General Regulation.

Any person who has knowledge of inside information should refrain from:

- using the information it possesses to acquire or dispose of, or to try to acquire or dispose of, for its own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates;
- disclosing such information to another person otherwise than in the normal course of its duties, or for a purpose other than that for which the information was disclosed to it; and
- advising another person to buy or sell, or to have another person buy or sell on its behalf, on the basis of inside information, the financial instruments to which such information pertains or related financial instruments.

The accumulation of administrative and criminal prosecutions has been replaced by a mechanism implementing a distribution between them. Consequently, the general attorney and the AMF (which are, respectively, the criminal and administrative prosecuting bodies) must consult each other prior to any act of prosecution related to insider dealing or market manipulation. In accordance with such mechanism, if either the general attorney or the AMF intend to prosecute then the relevant party must first notify the other of such intention. The other party will then have a two-month period to confirm whether it also intends to prosecute. Where the second prosecuting body also intends to prosecute, the attorney general of the Paris court of appeal will decide which of the two prosecuting bodies should proceed with the prosecution.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Pre-offer contractual arrangements

The bidder may acquire blocks of shares from the target's significant shareholders before the launch of its offer.

Alternatively, the bidder may approach the target's significant shareholders to secure the tendering of the blocks to its offer. Undertakings to tender must be disclosed to the public and to the AMF. Irrevocable commitments must be carefully drafted to comply with the principle of fair competition between competing bidders and, as such, will provide that they cease to be binding in the event of an AMF-approved competing offer. Likewise, revocable commitments subject to a break-up fee are valid only to the extent that they do not breach the aforementioned principle of fair competition.

The bidder may also enter into a tender offer agreement with the target. Tender offer agreements are common in French market practice. The board of the target may undertake to recommend the offer provided that it acts in compliance with the corporate interests of the company. Provided that they are of limited duration, "no-shop" provisions providing that the target will not solicit discussions with other potential offerors are permissible. A matching right for the bidder may be provided as well, subject to certain limitations and to the disclosure to the public.

Break-up fee arrangements with the target's shareholders or the target itself are typical and must be disclosed. They cannot be so high that they impede any counter-offer; otherwise they would conflict with the principle of fair competition between competing bidders or, when agreed with the target, be regarded a misuse of corporate assets

6.5 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These mechanisms take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

A law dated 29 March 2014 (the "**Florange Law**") abandoned the target company's board neutrality requirement for unsolicited bids, reversing the position adopted by France in 2006 to opt in under the Takeover Directive. As a consequence, the board of the target company may take frustrating actions against the takeover bid without prior shareholders' approval, provided that such defense measures (i) do not fall within the competence of the shareholders' general meeting and (ii) are not contrary to the corporate interest of the target company.

Moreover, the company's articles of association may provide that the provisions of external agreements, i.e., shareholders' agreements, providing for (i) the restriction of the transfer of shares, (ii) the limitation of voting rights with respect to the collective decisions to be adopted in the context of a takeover bid, and/or (iii) the granting of particular veto and political rights are not enforceable in a takeover bid situation.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase by the board (authorized capital) with or without preferential subscription rights of the shareholders.	• The completion of a capital increase requires an express authorization by a majority of 662/3% of the votes cast at a general shareholders' meeting at which at least 25% of the share capital is present or represented (the 25% quorum does not apply to the second meeting that is convened if the 25% quorum was not reached at the first meeting, a 20% quorum requirement will apply instead). • The authorization is valid for 26 months only, but can be renewed. However, the company's articles of association (or the resolution itself as recommended by proxies) may provide for the suspension of the board's authorization to increase capital during an offer period. • The capital increase may not exceed a maximum cap decided by the shareholders' general meeting in compliance with law. • If the capital increase is made without preferential subscription rights, the cap may not exceed 30% of the company's share capital in the context of a private placement. With respect to a capital increase without preferential subscription rights reserved to a named person or a category of beneficiaries, there is no cap set by law.
2. Share buyback	• The completion of a share buyback requires an authorization by a majority of 50% of the votes cast at a general shareholders' meeting at which at least 20% of

Mechanism	Assessment and considerations
Share buyback to reduce the floating shares that could be tendered to a hostile offer	the share capital is present or represented (the 20% quorum does not apply to the second meeting). • The authorization is valid for 18 months only, but can be renewed. However, the company's articles of association (or the resolution itself as recommended by proxies) may provide for the suspension of the board's authorization to implement a share buyback during an offer period. • The authorization is valid for 18 months only, but can be renewed. • The target company cannot hold treasury shares in excess of 10% of its share capital at any one time. • The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves. • Buybacks to be made in compliance with corporate, transparency and the Market Abuse Regulation.
3. Acquisition or disposal of assets An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a takeover bid.	This defense includes: • the acquisition of new assets creating liabilities on the company (the "fatman" defense); and • the disposal of particularly important assets of the company (the "crown-jewels" defense).
4. Warrants on new shares Warrants are issued prior to the takeover bid in favor of "friendly person(s)" who can exercise the warrants at their option and subscribe for new shares.	• Requires a prior approval by a majority of 66 2/3% of the votes cast at a general shareholders' meeting at which at least 25% of the share capital is present or represented. • The same restrictions as for capital increases apply for the issue of warrants on new shares, i.e., restrictions with respect to the persons that can benefit from them and the maximum percentage of share capital that it can represent.
5. Rights plans (defensive warrants)	• The board of the target may decide to issue (for no consideration) to all of its shareholders warrants giving a right to shares in the target on favorable terms thus diluting the bidder and making the transaction more costly. • This requires prior approval by a majority of 66 2/3% of the votes cast at a general shareholders' meeting. The approval can either be granted ahead of the takeover offer as part of the periodic issuance authorizations or following the announcement of a takeover offer.

Mechanism	Assessment and considerations
	• Unlike US rights plans, the warrants will be issued to any bidder's pre-bid shares and they will be issuable only in the event of a genuine takeover bid (meaning they are not effective against creeping acquisitions). • Any such issuance would allow the bidder to withdraw its takeover bid. • There is clear legal basis to issue these warrants but this defense remains untested on the French market so far.
6. **Shareholders' agreements**	• A voting undertaking is only valid if (i) it is limited in time and matters, (ii) it is and remains at all times in the interest of the company, and (iii) it complies with the mandatory provisions of French law. • The shareholders could be considered as "acting in concert". If so, disclosure obligations apply and, if they hold more than 30% of voting rights, an obligation to make a mandatory takeover bid could be triggered. • Assumes a stable shareholder base or reference shareholders. • The provisions of the shareholders' agreement must be publicly disclosed. • The articles of association may provide for the suspension of the provisions of shareholders' agreements restricting the transfer of shares or the exercise of voting rights in a takeover offer context.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom it acts in concert) holds 90% of the share capital and voting rights of the target company, it may force all other holders of shares and, subject to additional threshold conditions, securities giving access to the share capital to transfer their securities to the bidder at the price offered in the takeover bid.

Except following a successful voluntary offer, the enforcement of a squeeze-out is subject to the delivery of a fairness opinion in respect of the squeeze-out price by an independent expert.

7.2 Restrictions on acquiring securities after the takeover bid period

With respect to the acquisition of securities of the target company after a successful takeover bid, there is no written provision restricting such acquisition, nor is there any rule concerning the price of such subsequent acquisitions.

However, it is commonly accepted that a successful bidder may not launch a takeover bid for the remaining shares of the target company at different price conditions than those offered during the primary takeover bid for a period of 12 months following the successful primary takeover bid.

8. Delisting

Following a successful simplified takeover bid, the bidder will be able to squeeze out the residual minority shareholders (see 4.3 above). Concurrently with the completion of the squeeze-out, the shares of the target company will be delisted from Euronext Paris.

9. Contacts within Baker McKenzie

François-Xavier Naime and Stéphane Davin in the Paris office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in France.

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Germany

1. Overview

In the last three years, takeover transaction volumes were as follows:

Year	Mandatory bids	Of which delisting bids	Voluntary takeover bids	Of which delisting bids	Other voluntary bids	Of which delisting bids	Total	Total delisting bids
2024	6	2	11	3	13	13	30	18
2023	1	0	2	0	5	2	8	2
2022	8	2	14	3	9	8	31	13

German companies are often technological leaders and often highly profitable. Accordingly, they have been and will continue to be attractive takeover targets. Recent highlights were the takeovers of Covestro (a chemicals manufacturer) by ADNOC, of MorphoSys (a biotech company) by Novartis (takeover offer followed by de-listing offer), Software AG by Silver Lake (takeover offer followed by de-listing offer), the Port of Hamburg by MSC, a shipping company (creation of a joint venture), of Vantage Towers by a consortium of financial investors, SLM Solutions (a 3D-printing company) by Nikon, and Aareal Bank by Advent. Overall, there is an abundance of strategic acquisitions with a few private equity investments and a large number of de-listings. More than half of all offers had a de-listing background. In some cases, the bidder launched a "normal" takeover bid followed by a delisting bid a few months later.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of German law relating to public takeover bids can be found in:

- the Act on the Acquisition of Securities and on Takeovers ("**Takeover Act**"); and
- several accompanying regulations, most importantly the Regulation Concerning the Contents of the Offer Document, the Consideration for Takeover Bids and Mandatory Bids, and Exemptions from Obligation to Publish and Launch a Bid ("**Bid Regulation**"), all of which entered into force at the beginning of 2002, but have been frequently revised.

The main body of the German takeover legislation reflects Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Additionally, the underlying company laws have only been harmonized to a very limited degree. Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Germany, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (last major amendment by Directive 2013/50/EU, last amended by Regulation (EU) 2021/337) on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are set forth in Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, as amended ("**MAR**"), and related EU legislation. For further information, see 6.3 below.

(c) The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are based on the EU Prospectus Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading and repealing Directive 2003/71/EC (last amended by Regulation (EU) 2021/337).

(d) The Exchange Act (*Börsengesetz*) to the extent that a voluntary de-listing requires a prior unconditional public bid to the shareholders to purchase their shares at a certain minimum price.

(e) Corporate (stock corporation) law, notably the provisions on a squeeze-out of minority shareholders, but also more generally those on rights and obligations of the target company's corporate bodies.

(f) The general rules on the supervision and control of the financial markets.

(g) The rules and regulations regarding merger control.

(h) The rules regarding foreign direct investment by foreign bidders or bidders with a foreign parent (see 2.5 below).

These rules and regulations are not further discussed herein, or are only discussed to a very limited extent.

2.3 Supervision and enforcement by BaFin

Public takeover bids are subject to the supervision and control of the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* or the "**BaFin**"). BaFin is the principal securities regulator in Germany.

BaFin has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed in case of non-compliance.

BaFin also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 General principles

The following general principles apply to public takeovers in Germany. These rules are partly based on the Takeover Directive:

(a) all holders of securities of a target company of the same class must be afforded equal treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. The management board and supervisory board of the target company must give their views on the bid – in particular on price - and on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the management board and advisory board of a target company must act in the best interest of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) the person or legal entity making the offer ("**Bidder**") and the target company must execute the offer expeditiously;

(e) false markets must not be created in the securities of the target company, the Bidder company or any other company concerned by the bid in such a way that the rise or fall of the prices of their securities becomes artificial and the normal functioning of the markets is distorted;

(f) a Bidder must announce a bid only after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking reasonable measures to secure the implementation of any other type of consideration (certain financing); and

(g) a target company must not be hindered in the conduct of its affairs for longer than it is reasonable by a bid for its securities.

2.5 Foreign investment restrictions

Germany has long embraced foreign investment, imposing few limits on foreign investors and offering them the same rights and benefits as domestic acquirers. In light of a number of large investments that have led to increased wariness among the German public, particularly concerning Chinese investments, Germany has strengthened and continues to strengthen its foreign investment review laws through a number of consecutive reforms. A reform of the foreign investment restrictions in 2021 introduced 16 additional categories of business activities triggering a mandatory notification requirement in Germany. No additional categories triggering a mandatory foreign investment filing requirement have been introduced since. The categories then introduced particularly concern future and key technologies, such as artificial intelligence, robotics or autonomous driving. The voting rights thresholds differ depending on the German target's business activity and may generally be 10, 20 or 25%. Regulation (EU) 2019/452 (EU Screening-Regulation) entered into force in October 2020 and created a common EU-wide regulatory framework on foreign investment review, which the EU Commission intends to reinforce per a draft amendment regulation from early 2024. In its current form, the EU Screening Regulation obliges, among other coordination efforts, EU member states to take the impact of foreign investments on other EU member states into account when reviewing foreign investments. In 2023, the competent Federal Ministry for Economic Affairs and Climate Action (*Bundesministerium für Wirtschaft und Klimaschutz*) (BMWK) conducted 106 foreign investment reviews. This number rose sharply to 306 cases in 2021. In 2023, BMWK conducted 257 foreign investment reviews. In most of the acquisitions considered sensitive, the government managed to conclude contracts with the parties to deter potential threats deriving from foreign acquisitions.

In Germany, the Foreign Investment Review ("**FIR**") falls into two categories:

- Cross-sector reviews (Sections 55-59 Foreign Trade and Payments Act - AWV); and
- Sector-specific reviews (Sections 60-62 AWV).

(a) Cross-sector review

BMWK may investigate any direct or indirect acquisition of at least 10%, 20% or 25% of the voting rights in a German company by an investor outside the EU/EFTA, depending on the type of company. The 10% threshold applies to particularly sensitive companies, such as those operating critical infrastructure or sensitive digital technologies, but also includes certain media companies. In cases of circumvention, investors resident in the EU may also be reviewed. BMWK is entitled to investigate and potentially restrict transactions if they have a probable adverse effect (*voraussichtliche Beeinträchtigung*) on the public order or security of Germany or another EU member state.

The law provides specific guidance on the interpretation of the term "public order or security". A non-exhaustive catalogue of industry sectors illustrates whether the acquisition by foreign investors is potentially considered a threat to public order or security. These industries in particular – but by no means exclusively – relate to "critical infrastructure", i.e., an institution, facility or parts thereof that:

- belong to the energy, information technology, telecommunication, transport and traffic, health, water, nutrition, finances and insurance sectors; and
- are of great importance to the functioning of the community as their failure or impairment would result in serious supply shortages or considerable disruption of public safety.

Companies designing or modifying software for sectors that specifically serve the operation of critical infrastructures would also be caught. The non-exhaustive catalogue also includes media companies that contribute to the formation of public opinion, companies providing cloud-computing services, companies entrusted with the task of monitoring telecommunications or producing technical equipment in relation to this, companies producing components or services for telematics infrastructure, developers or manufacturers of certain technologies involving artificial intelligence, robot developers and manufacturers, and semiconductor manufacturers.

For all acquisitions of German companies that belong to the sectors specifically referenced in the catalogue by non-EU/EFTA purchasers, BMWK has to be notified about the acquisition. Non-listed sectors do not fall under a mandatory notification requirement but can still be subject of an FIR.

Following the notification of the conclusion of the contract on the investment, typically the SPA, BMWK has a two-month deadline to initiate investigations. Transactions may be notified prior to the conclusion of the SPA on the basis of a term sheet for example – the two month period, however, only starts to run from the conclusion of the contract underlying the transaction. The start of the period furthermore hinges on the gaining of positive knowledge of the conclusion of such transaction, or, in cases where an offer within the meaning of the Takeover Act is made, of the publication of the decision to submit the offer by BMWK.

Should BMWK initiate a formal review process within these two months, it has four months to review the transaction and decide on potential restrictions. However, this four-month period can be extended on multiple grounds and also suspended - which is frequent in practice in the case of the conduct of contractual negotiations - and in individual cases can also be recommenced. There is a limitation period of five years to investigate if the Ministry claims that it was not aware of the conclusion of the contract unless the acquirer can prove otherwise. In the period during which the acquisition may be reviewed, the legal validity of the contract is subject to the condition subsequent of a prohibition by BMWK, i.e., it is legally effective but may become invalid if BMWK prohibits the transaction. In contrast, closing transactions (*Verfügungsgeschäfte*) are provisionally invalid and become valid only once the transaction is cleared pursuant or the respective review periods have expired.

In order to obtain legal certainty the investor can apply to BMWK for a certificate of non-objection. This certificate confirms that the acquisition does not impact on the public order or security. At the same time, this will reduce the deadline for initiating a review process from five years to two months because BMWK has through the application become aware of the acquisition. The clearance certificate is considered as granted if BMWK fails to open an investigation during that period.

The German government has only prohibited a few transactions to date. In 2018 for example, it prohibited the acquisition of Leifeld Metal Spinning AG by the Chinese company Yantai Taitai Manoir Nuclear Equipment Co., Ltd. In 2020, BMWK prohibited the acquisition of majority shares and almost all voting rights in the German IMST GmbH by the Chinese defense company Addsino Co. Ltd. China. The German government also prohibited the acquisition of Elmos Semiconductor SE, a semi-conductor chips production facility, by a Chinese investor in 2022.

Although not formally prohibited, in 2016 the acquisition of Aixtron SE by the Chinese Fujian Grand Chip Investment Fund LP failed due to a prohibition by the USA after a clearance certificate had already been granted in Germany. In 2018, the German government prevented the acquisition of 20% of the shares in 50 Hertz Transmission GmbH by the Chinese state-owned company State Grid Corporation of China by persuading Belgian shareholder Elia System Operator S.A. to exercise its right of first refusal in order to in a second step acquire the shares from the latter at the same price. In one case (the takeover of Siltronic by the Taiwanese company Global Wafers), the available period until the "drop dead date" in the takeover bid document expired without the transaction having been approved, Allegedly, this was because other approvals had been obtained only very shortly before that date.

(b) **Sector-specific review**

The sector-specific review applies to investments in German target companies that are active in the following sectors:

- Militarily export-controlled items, e.g. arms;
- defense technology;
- certain products with IT security functions; and
- defense-related facilities.

BMWK may investigate any acquisition of at least 10% of the voting rights or an equivalent degree of control in such a company by any investor outside of Germany. In cases of circumvention, domestic acquirers may also be reviewed.

Within the sector-specific review, BMWK reviews whether fundamental security interests of Germany are endangered. Such endangerment has to:

- be actual;
- be sufficiently important; and
- affect fundamental public interests (ordre public).

Even in the case of key industries it may generally not be presumed that a fundamental interest of the community — as laid down in the abovementioned ordre public clause — is generally and always affected. Each acquisition must be individually examined to look at its effect on supply to the population to determine if a fundamental public interest is affected.

Acquisitions subject to the sector-specific review must be notified in writing to BMWK by the purchaser. BMWK has a two-month deadline following the submission of the complete notification to intervene.

In this context, BMWK is entitled to:

- prohibit the transaction;
- issue instructions or orders that are conditional for the approval of the transaction; or
- conclude a contract under public law to safeguard fundamental public interests.

There is a limitation period of five years if BMWK claims that it was not aware of the conclusion of the contract unless the acquirer can prove otherwise.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a German listed corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to submit questions to the management board at general shareholders' meetings. • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process or other reasons, subject to the shareholder having attended the meeting and having recorded an objection against the resolution, except where the deficiency relates to the calling of the meeting. • The right to file/publish alternative suggestions with respect to a certain item on the agenda of the shareholders' meeting or with respect to the election of new supervisory board members.
The lower of 1% or shares representing EUR	• The right to apply for a judicial decision to be authorized to assert claims for damages against members of the company's

Shareholding	Rights
100,000 of the share capital	boards if no action has been taken prior to the expiration of a deadline and in case of suspicion of severe wrongdoing or breach of the law. • The right to file an application with the court for a special audit of any matters relating to the formation of the stock corporation or the management of the stock corporation's business within the last 5 years if the shareholders' meeting has refused to appoint a special auditor. • The right to apply for a special audit with the local court with regard to the suspicion of any material invalidity of items on the balance sheet.
The lower of 5% or, in some cases, shares representing EUR 500,000 of the share capital	• The right to demand the management board to convene a general shareholders' meeting. • The right to put additional items on the agenda of a general shareholders' meeting. • The right to file an action to set aside the resolution on the appropriation of the net retained profits. • The right to demand that the court shall appoint or remove a liquidator, if important reasons exist therefore.
The lower of 10% or shares representing EUR 1,000,000 of the share capital	• The right to demand a separate vote with regard to the discharge of management. • The right to demand that the court appoint special representatives to assert a claim for damages (particularly against members of the management or supervisory board). • The right to demand that the court removes a member of the supervisory board for material cause. • The right to veto waiver or settlement of claims against the founders or the board members or the controlling shareholder.
More than 25% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block: • changes to the corporate purpose of the company; • any other changes to the articles of association, mergers, de-mergers, capital increases, capital reductions and dissolution of the company; • the authorization of the management board to increase the company's share capital without further shareholder approval (the so-called "**authorized capital**");

Shareholding	Rights
	• the authorization of the management board to enter into a domination and/or profit and loss pooling agreement (see 7.4 below); • the disapplication of the subscription right of existing shareholders in case of share issues; and • divestitures or outsourcing of substantial assets of the company if certain further criteria are met.
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to: • appoint and dismiss members of the supervisory board; • appoint and dismiss statutory auditors to approve the annual financial statements; • resolve on the approval of the remuneration scheme submitted by the supervisory board; • grant discharge from liability to the members of both the management and supervisory board; and • take decisions for which no special majority is required.
More than 75% (at a general shareholders' meeting)	The possibility to approve the measures set out under 'More than 25% (*at a general shareholders' meeting*)' above.
90%	The possibility to force all other shareholders to transfer their shares through a merger squeeze-out (provided that the 90% shareholder is also a German stock corporation, see 7.1 below).
95%	The possibility to force all other shareholders to transfer their shares for cash compensation, a "squeeze-out" (see 7.1 below).

3.2 Restrictions and careful planning

German law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a Bidder, announcements of a potential takeover bid by a Bidder or a target company, and prior due diligence by a Bidder. The main restrictions and hurdles have been summarized below. Careful planning is therefore necessary if a Bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules prohibiting insider trading may prevent a Bidder that has inside information regarding a target company from building a stake or launching a takeover bid. Certain exemptions apply under Article 9 of MAR, in particular for inside information obtained in the conduct of a public takeover, provided that such inside information is made public when the offer is launched.

3.4 Disclosure of shareholdings and financial instruments

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a Bidder starts building up a stake in the target company, it will be obliged to announce its stake to the target company and BaFin if the attached voting rights have reached or crossed an applicable disclosure threshold. The relevant disclosure thresholds in Germany are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

Similar rules apply to the holding of instruments relating to shares in target companies, including call and put options and cash-settled instruments, such as contracts for difference and to the combined holding of shares and instruments. For instruments and for the reporting of the combined holding of shares and instruments, the 3% threshold does not apply.

When determining whether a threshold has been reached or crossed, a Bidder must also take into account voting rights held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.8 below), which includes affiliates. The parties could also include existing shareholders of the target company with whom the Bidder has entered into specific arrangements, such as pooling or call option agreements.

Additional disclosure obligations apply if the 10% threshold or a higher threshold is reached or crossed. Within 20 trading days, the shareholder must disclose the investment objective and the source of the funds used for the investment. This means that the shareholder must disclose:

- whether the investment serves strategic goals or to generate trading profits;
- whether there is intention to increase the number of voting rights over the next twelve months;
- whether it is intended to take influence over the composition of the boards; and
- whether it is intended to change the capital structure of the target company, in particular regarding equity and debt financing or the dividend policy.

In relation to the source of funds, the shareholder must disclose any debt financings in connection with acquiring the shares.

If intentions change, this must be reported as well. There are no sanctions for non-compliance with these disclosure obligations save for the target company publishing that it has received no timely disclosure and there is a risk that the shareholder could be found to have manipulated the market by failing to make the requisite disclosures.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. In particular, the target company must publish the disclosure of shareholdings and instruments received from investors within a maximum period of three trading days. The target company must also report its treasury shares if the shareholding reaches or crosses the thresholds of 5% and 10%. The target company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid in a "protracted process" may constitute inside information. If so, the target company must announce this. However, the management board of the target company can delay such announcement if it believes that a disclosure would not be in the best interest of the company. For instance, this could be the case if the target's management board believes that an early disclosure would prejudice the negotiations regarding a bid. However, a delay of the announcement is only permitted if the non-disclosure does not entail the risk that the public is misled and if the company can keep the relevant information confidential. Under the EU Listing Act this regime will change significantly effective on 5 June 2026 and issuers will no longer need to report intermediate steps in a protracted process, but only the "final event". Under a delegated act, ESMA shall define the "final" event that triggers the disclosure obligation.

3.6 Announcement of a public takeover bid

The offer procedure is generally started by the Bidder's announcement of its decision to launch a voluntary offer (for more detail, see 5.2 below).

3.7 Due diligence

The German public takeover bid rules do not contain specific rules regarding the question of whether a prior due diligence can be organized, nor how such due diligence is to be organized. German stock corporation law provides a general obligation for the management of a stock corporation to keep information of the company confidential. Nevertheless, the concept of a (limited) prior due diligence or pre-acquisition review by a Bidder is generally accepted in the market and by BaFin as well, and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms and further restrictions under antitrust law, as applicable. One further consequence of a bidder having obtained inside information is that usually such inside information must be published before the offer document is published.

3.8 Acting in concert

For the purpose of the German takeover bid rules, persons "act in concert":

- if they collaborate with the Bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring the control over the target company, frustrating the success of a takeover bid or maintaining the control over the target company; or
- if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to have a lasting common policy in respect of the target company.

Subsidiaries are deemed to act in concert with the parent company.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. For example, this is the case where a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad, and in practice many issues can arise to determine whether persons act or do not act in concert. This is especially relevant in relation to mandatory takeover bids. However under a recent court case, it was clarified that a one-off coordination between shareholders in connection with a supervisory board election is not acting in concert, even if this has a lasting effect on the target company.

If one or more persons in a group of persons acting in concert acquire or jointly hold voting securities as a result of which the group in the aggregate would pass the 30% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 30% threshold. However, it is worth noting that such aggregation for the purpose of the requirement of a mandatory takeover bid requires (a) a coordination on the exercise of voting rights in the target company or (b) acting with the goal of permanently and significantly changing the entrepreneurial direction of the target company.

4. Effecting a Takeover

There are four main forms of public bids in Germany:

- Voluntary bids
- (Voluntary) takeover bids
- Mandatory bids
- Delisting bids

Voluntary bids fall under a more liberal legal regime, while (voluntary) takeover bids are already strictly regulated and mandatory bids are subject to the strictest level of regulation.

The main difference between such three types of offers relates to the principle of "acquisition of control". For the purpose of the Takeover Act, "acquisition of control" occurs if a Bidder acquires at least 30% of the voting rights in a target company ("**Control**"). For purposes of determining whether Control has been acquired, extensive attribution rules apply.

In voluntary bids, the acquisition of Control is not intended and does not occur. In a takeover bid, the acquisition of Control is the goal of the offer, i.e., the Bidder intends to acquire Control through or in conjunction with the offer. In a mandatory bid, the acquisition of Control precedes the offer and triggers an obligation to make the mandatory bid.

4.1 Voluntary bid

Voluntary bids are all offers not aimed at achieving Control. Basically, two different kinds of offers are covered:

- Offers to obtain less than 30% of the voting rights in a target company to build up a certain non-controlling stake.
- Offers to obtain further shares by a shareholder who already has Control, so-called add-on offers. For example, such add- on offers could occur if a Bidder were to make a public offer with the goal to increase its stake to 90% or even 95%, enabling the Bidder to squeeze out the remaining minority shareholders.

The provisions of the Takeover Act on voluntary bids are less strict than those on takeover and mandatory bids. For example, the Takeover Act does not restrict the Bidder's choice of the type and amount of consideration for a voluntary bid. In addition:

- unlike takeover and mandatory bids, voluntary bids do not have to extend to all shares of the target company. The Bidder may set a maximum offer volume. This is strongly recommended so that the Bidder avoids crossing the 30% threshold, which in turn would trigger an obligation to make a mandatory bid. In case the offer is accepted for more shares than the maximum, the volume of acceptances would then be reduced proportionally for each shareholder; and
- a voluntary bid and a takeover bid may also be made subject to conditions. The only restriction is that the Bidder may not have a direct influence on the fulfilment of these conditions.

- No conditions can be included where the bid is at the same time a delisting bid, because delisting bids must be unconditional.

4.2 (Voluntary) takeover bid

Takeover bids are made by a Bidder who does not yet have Control over the target company, but aims to acquire Control over the target company through or in conjunction with the offer. Takeover bids are voluntary. They must extend to 100% of the outstanding shares of the target company, but otherwise benefit from a somewhat more flexible regime compared to the one applicable to mandatory bids.

- Most importantly and unlike mandatory bids, takeover bids may be subject to the fulfilment of certain conditions. In practice, the most frequently used condition (besides merger control clearance) is a so-called minimum acceptance threshold. The Bidder can define a certain acceptance ratio, e.g., a minimum of 75% of the shares of the target company (including shares already held). If this threshold is not met and the condition is not waived, the offer lapses.
- It is also possible to make a takeover bid subject to a material adverse change condition, which will allow the Bidder to withdraw from the offer if certain clearly defined adverse events occur. However, the Bidder must not be able to withdraw from the offer at their own discretion. Therefore, conditions are only admissible if the Bidder has no direct influence on their fulfilment and if they are so clearly defined that there is no room for interpretation as to whether the conditions are met or not.
- The Bidder can waive the conditions during the offer period. For example, a Bidder may waive the minimum acceptance threshold.
- No conditions can be included where the bid is at the same time a delisting bid, because delisting bids must be unconditional.

4.3 Mandatory bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) directly or indirectly hold(s) at least 30% of the (actual outstanding) voting securities of the target company.
- The mandatory takeover bid is unconditional (subject to certain very narrow exemptions such as regulatory approvals in special circumstances).

A mandatory takeover bid is not required if the Bidder has obtained control on the basis of a voluntary takeover bid or if BaFin has granted an exemption. There are two different ways in which a Bidder may be exempted even though they hold 30% or more of the voting rights.

Firstly, BaFin may decide that some or all of the voting rights are not to be taken into account when calculating whether the 30% threshold has been reached or not. However, this exemption is only available if the Bidder has acquired the relevant voting rights by way of:

- inheritance, donation between near relatives;
- change of the legal form; or
- restructuring measures within the group of companies to which the Bidder belongs.

Secondly, upon written request, BaFin may exempt the Bidder from the obligation to submit a mandatory takeover bid in certain cases, which are provided for in the Bid Regulation. BaFin may provide such exemption at its own discretion. In particular, an exemption will be considered if:

- the Bidder has acquired Control by way of inheritance or donation from someone who is not a relative;
- the Bidder intends to recapitalize a target company in financial difficulties;
- the Bidder has only indirectly acquired Control through the acquisition of another company (holding a controlling stake in the target company), and the book value of the stake in the target company held by the other company amounts to less than 20% of the entire book value of its assets;
- the Bidder has acquired the controlling stake only as a security;
- the acquisition of Control was triggered by a reverse share split of the target company;
- another shareholder holds a higher stake in the target company than the Bidder;
- on the basis of the attendance at the last three general meetings of the target company, it is unlikely that the Bidder will have more than 50% of the voting rights at the next general meeting; or
- the Bidder's stake has fallen below the 30% threshold immediately after it was reached.

4.4 Delisting bids

Under the Stock Exchange Act (*Börsengesetz*) it is a condition to a delisting application that the shareholders have an "exit" from the company through a voluntary bid, which is typically launched by a major shareholder or the controlling shareholder of the target company.

The delisting bid cannot, without exception, be made subject to any condition.

The key features are similar to the rules on mandatory bids, i.e., the bid must relate to all outstanding shares of the company not held by the Bidder and follow the minimum pricing rules for takeover bids with the following modifications:

- The cash offer consideration must be at least the volume weighted average stock price ("**VWAP**") over a period of six months (rather than three months).
- The offer consideration must be based on a company valuation where the issuer failed to publish inside information under Article 17 of MAR or the issuer or the Bidder have breached the prohibition of market manipulation under Article 15 of MAR or where the stock trading during the relevant period is illiquid.

Delisting bids could be combined with other bids, e.g., a takeover bid, provided the stricter rules for delisting bids are followed. This would, for example, not allow any conditions, such as a minimum acceptance threshold., and minimum pricing rules from both sets of rules would apply, i.e. typically would be subject to the higher of two thresholds (3 months and 6 months VWAP).

5. Timeline

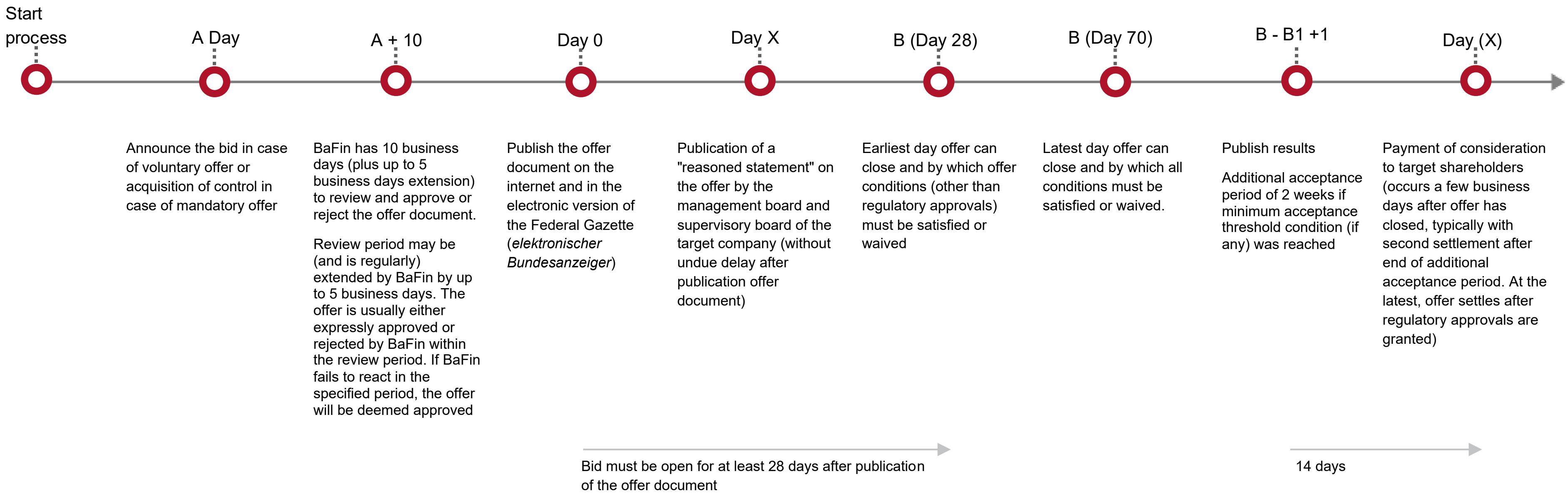
The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under German law. The takeover bid process for a mandatory public takeover bid is similar to the process set out below for a voluntary public takeover bid, with certain differences.

Step	
1.	Preparatory stage: • Preparation of the bid by the Bidder (due diligence, financing and draft offer document). • The Bidder approaches the target company and/or its key shareholders. • Negotiations with the target company and/or its key shareholders.
2.	Launching of the bid: • A significant step in the preparation of a takeover bid is the decision of the Bidder to launch a voluntary offer ("**Takeover Decision**"). The Bidder has to notify the Takeover Decision to BaFin and the target and publish it immediately ("**Section 10 Notification**"). Determining the point in time when the Takeover Decision is taken can sometimes be difficult as it typically coincides with the signing of a binding agreement with the key shareholders and/or the target, but may also occur earlier in the process. • The publication of the Section 10 Notification marks the beginning of a four-week deadline for the Bidder to prepare the offer document and to submit it to BaFin for review and approval.
3.	After submission of the offer document by the Bidder, BaFin has a period of 10 business days to review and approve or reject the offer document. The review period may be extended by BaFin by up to five business days. The offer is usually either expressly approved or rejected by BaFin. If BaFin fails to react in the specified period, the offer will be deemed approved.
4.	Following BaFin's approval of the offer document the Bidder must publish the offer document on the internet and at least an announcement on the publication in the electronic version of the Federal Gazette (elektronischer Bundesanzeiger).
5.	Launch of the acceptance period: • Start: after publication of the offer document. • Duration: not less than four weeks and not more than 10 weeks (ultimately relevant is the number of business days, i.e. public holidays are disregarded). The acceptance period will be extended (a) in the event of a competing offer with a longer acceptance period, (b) if the target calls a general meeting or (c) if the offer is amended in the last two weeks of the acceptance period.
6.	Publication of a "reasoned statement" on the offer by the management board and supervisory board of the target company (without undue delay after publication of the offer document).
7.	Publication of the number of shares held/tendered: weekly during the acceptance period, daily during the last week of the acceptance period and immediately after the end of the acceptance period).

Step	
8.	If a voluntary takeover offer is successful, i.e., unless a minimum acceptance threshold was not reached: "Additional acceptance period" of two weeks.
9.	Publication of results: immediately after the end of the additional acceptance period.
10.	Payment of the offered consideration by the Bidder (depending on the structure chosen by Bidder, there may be one or two settlements).

Set out below is an overview of the main steps for a takeover offer in Germany.

Takeover offer (indicative timeline)



Start process	
A Day	Announce the bid in case of voluntary offer or acquisition of control in case of mandatory offer
A + 10	BaFin has 10 business days (plus up to 5 business days extension) to review and approve or reject the offer document. Review period may be (and is regularly) extended by BaFin by up to 5 business days. The offer is usually either expressly approved or rejected by BaFin within the review period. If BaFin fails to react in the specified period, the offer will be deemed approved
Day 0	Publish the offer document on the internet and in the electronic version of the Federal Gazette (*elektronischer Bundesanzeiger*)
Day X	Publication of a "reasoned statement" on the offer by the management board and supervisory board of the target company (without undue delay after publication offer document)
B (Day 28)	Earliest day offer can close and by which offer conditions (other than regulatory approvals) must be satisfied or waived
B (Day 70)	Latest day offer can close and by which all conditions must be satisfied or waived.
B - B1 +1	Publish results Additional acceptance period of 2 weeks if minimum acceptance threshold condition (if any) was reached
Day (X)	Payment of consideration to target shareholders (occurs a few business days after offer has closed, typically with second settlement after end of additional acceptance period. At the latest, offer settles after regulatory approvals are granted)

Bid must be open for at least 28 days after publication of the offer document

14 days

6. Takeover Tactics

6.1 Inside information

A German listed company is obligated to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public.

- "*Inside information*" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

- Information shall be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

- "*Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments*" shall mean information a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large gray area may exist as to whether certain events will need to be disclosed or not.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the Takeover Act contains detailed provisions in relation to public notifications and announcements that will have to be made by the Bidder at specific times. These generally start with the obligation to announce the Takeover Decision through the Section 10 Notification (see 5 above) or the obligation to announce an acquisition of Control. Notifications and disclosures generally do not require prior approval by BaFin, with the exception of the offer document, but it is not uncommon to approach BaFin prior to the disclosure.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under German law is set forth in the MAR. The same rules on insider dealing and market abuse apply in all other jurisdictions of the EEA – even though there are sometimes important nuances in interpretation between the different regulatory authorities across the EEA. Also, there may be significant differences in the vigor of enforcement by the different authorities.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Common anti-takeover defense mechanisms

As a general rule, the Takeover Act prohibits the management board of a target company from carrying out any actions that could prevent the success of an offer from the time of publication of a Takeover Decision or the acquisition of Control until the publication of the takeover result (no-frustration rule). Certain exceptions apply, notably for actions of an "ordinary and prudent" manager in the specific situation, actions with the approval of the supervisory board and actions based on an authorization by the general meeting.

Despite the no-frustration rule, the management of a target company can use certain strategies to try to fend off a hostile takeover. The table below contains a summarized overview of the mechanisms that can be used by a German target company as a defense against a takeover bid. For some defense measures, there are (to some extent significant) concerns with respect to their legality (most often under general stock corporation law) and/or effectiveness. Hostile takeovers have been the exception in Germany so far. Therefore, defense measures are more often a matter of (controversial) discussion in legal literature than in practice. Except for a few individual cases, case-law dealing with defense measures is very rare.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase from authorized capital with or without subscription rights of the shareholders, thereby making the bid more expensive.	• Requires an express authorization in the articles of association. To be adopted, it must obtain a majority of 75% of the votes cast at a general shareholders' meeting. • The authorization is valid for up to 5 years only, but can be renewed. The authorization may not exceed 50% of the existing share capital. • If subscription rights of the shareholders are excluded, the capital increase may not exceed the lower of (i) 10% of the existing share capital or (ii) the amount remaining available under the authorized capital. • The issue price may not be significantly below the current stock market price (in practice, this will usually be at or above the bid price). • Capital increase from company reserves requires prior approval by general shareholders' meeting under German law. Might be used as defense mechanism in case of foreign incorporated company listed in Germany, e.g., Standard Industries/Braas Monier. • It is not permissible to treat the shareholding, if any, of the Bidder differently from the holdings of other shareholders.
2. Share buyback	• Uncommon defense mechanism. Share buyback needs to be in accordance with statutory rules, which define very limited cases. • Most common case is an express authorization by a general shareholders' meeting. • The authorization is valid for up to 5 years only, but can be renewed.

Mechanism	Assessment and considerations
	• The total of directly and indirectly acquired shares may not exceed 10% of the existing share capital. • Share buybacks may also facilitate bids. (Note further that the target company may be deemed to act in concert with the bidder in which case there would be minimum price implications.)
3. Sale of crown jewels/ Asset lockup An arrangement affecting the assets of or creating a liability for the company which is triggered by a change in control or the launch of a takeover bid or creating obstacles for the Bidder under merger control law by making an asset unsellable.	• Measure has to be in the best interest of company, and not in breach of the no-frustration rule.
4. Convertibles/Options/ Warrants on new shares Convertibles/Options/ Warrants are issued prior to the takeover bid in favor of "friendly person(s)" (without subscription rights of the shareholders) who can exercise their rights and subscribe for new shares.	• Generally requires a prior approval by a majority of 75% of the votes cast at a general shareholders' meeting (unless articles provide for 50% majority, which is possible in some cases, but not if subscription rights are excluded). • If subscription rights are excluded, the rights to acquire new shares may not exceed 10% of the existing share capital. • The exercise price has to be determined when the rights are issued in accordance with applicable rules.
5. Other frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• Measure has to be in the best interest of the company, and not in breach of the no-frustration rule.
6. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• The shareholders are likely to be considered as "acting in concert". If so, disclosure obligations apply and, if the participating shareholders jointly hold more than 30% of voting rights, an obligation to launch a mandatory bid may be triggered, depending on the scope of the agreement. • Assumes a stable shareholder base or reference shareholders.
7. Search for a competing Bidder (a "white knight") or an anchor shareholder who agrees not to tender	• Generally admissible, since adding another Bidder enables the target to guarantee the most favorable terms of offer in the best interest of all shareholders.

Mechanism	Assessment and considerations
its shares in the bid ("white squire")	• Further actions to enhance the success of the competing offer are inadmissible. It is, for example, not normally admissible to issue shares from the authorized capital, excluding the subscription right, as a "jump start" for the competing Bidder or "white squire". Financial assistance rules under stock corporation law prohibit the granting of financial support to the "white knight" or "white squire" for the acquisition of shares.
8. Limitations on share transfers Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders.	• Very exceptional for listed companies (listed securities are in principle freely transferable; impact on share liquidity). • Almost impossible to implement after the company has obtained its listing.
9. Complication of obtaining control of supervisory board Rights for individual shareholders to appoint supervisory board members, staggered terms of office of board members.	• Supervisory board nomination right exceptional for listed companies. • A staggered board is common, but supervisory board members can be removed in a general meeting with 75% majority (may be reduced to 50% majority in the articles of association).

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following the takeover bid or at a later stage, the Bidder holds 95% or 90% of all voting rights, they can initiate a squeeze-out procedure. German law provides three different squeeze-out procedures, namely under the Takeover Act, under the Stock Corporation Act and under the Transformation Act (a so-called 'merger squeeze-out'). The rules applicable to each procedure differ, except that for all procedures the shares of all other shareholders are transferred to the Bidder in exchange for cash compensation.

If, following a takeover bid, the Bidder holds at least 95% of all voting rights, they can initiate a squeeze-out procedure under the Takeover Act. In this case, the squeeze-out will need to be applied for in a court of law and shall be decided by way of a court decree. A significant advantage of a squeeze-out under the Takeover Act is that in some cases the amount of compensation to be paid to the minority shareholders is equal to the offer price. The compensation is deemed to be adequate if at least 90% of the shares that were subject to the offer have been tendered. Such threshold of 90% of shares subject to the offer has in practice not been reached except in one rather unusual transaction. If the 90% target is not met, it is not recommended to use the post-takeover squeeze-out procedure because of the need to establish the amount of compensation by way of expert valuation reports. These valuations are prone to challenge from minority shareholders, so that considerable delays are to be expected. A pending post-takeover squeeze out procedure in court will also block all other methods of squeezing out the shareholders.

For a squeeze-out under the Stock Corporation Act, the major shareholder must send a squeeze-out demand to the management of the target company. While the target company must prepare a general meeting in which the shareholders will vote on the squeeze out, it is the shareholder who has to prepare a specific report in anticipation of the general meeting and the "fairness", of the compensation has to be reviewed and confirmed in a report prepared by an independent auditor appointed by the court. Dissenting minority shareholders may successfully block the effectiveness of the squeeze-out by court action at least for some time, and may claim for higher compensation.

A "merger squeeze-out" under the Transformation Act has the advantage that the majority shareholder can implement a squeeze-out with a holding of only 90% or more of the registered capital. The squeeze-out under the Transformation Act is subject to the condition that it is implemented in connection with a statutory merger (*Verschmelzung*) between the majority shareholder and the target, meaning that the shareholder resolution on the squeeze- out has to be adopted within three months of the signing of the merger agreement. Furthermore, the squeeze-out under the Transformation Act is only possible if the majority shareholder is a German stock corporation (*Aktiengesellschaft*), a German partnership limited by shares (KGaA) or a European stock corporation (SE). Such legal form of the majority shareholder can easily be achieved though, with the relevant corporate actions.

7.2 Sell-out

If a Bidder was to be permitted to carry out a squeeze-out under the Takeover Act, i.e. the 95% post-bid ownership referred to in 7.1, the security holders that did not accept the takeover bid shall have the right to continue to accept the offer within an additional period of three months after the end of the acceptance period. The relevant provision has not really been used in practice yet.

7.3 Restrictions on acquiring securities after the takeover bid period

If the Bidder and the persons acting in concert with the Bidder (i) directly or indirectly acquire any securities that were subject to the takeover bid in an "off-market" transaction (ii) during the period of one year following the end of the takeover bid period (iii) for a consideration which is higher than the consideration offered in the takeover bid, the price difference will have to be paid to all security holders that tendered their securities to the Bidder during the original takeover bid period.

7.4 Domination agreements/Profit and loss pooling agreements

If the requirements for a squeeze-out are not fulfilled, a common post- offer integration measure under German law is a domination agreement which may be entered into between the Bidder and the target company. The target company becomes a "dependent company" dominated by the Bidder who can give binding instructions which have to be followed by the management of the dependent company.

From the Bidder's perspective the main advantage of such binding instructions is that the strict standards of the maintenance of capital set out by the German Stock Corporation Act are reduced. Once the domination agreement has become effective, the Bidder has far more options for refinancing the prior offer.

In particular, in simplified terms, all cashflow can be up-streamed to the level of the bidder company to pay interest and repay the acquisition debt and the target company can give additional collateral to the banks financing the bid. As the dominating shareholder, the Bidder may also enter into non-arms-length intragroup agreements with the target company as long as this is in the best interests of the overall group.

Before a domination agreement becomes effective (with its registration at the commercial register of the dependent company), the following major steps are required:

- A shareholder resolution by the shareholders of the target company with at least a 75% majority of the share capital represented at the shareholders' meeting.
- The domination agreement has to include an offer to acquire the shares of the target company which are held by minority shareholders against payment of a fair compensation. If the dominating shareholder is not a German stock corporation, the compensation must be paid in cash.
- The dominating shareholder has to pay a guarantee dividend to the remaining minority shareholders of the target company as long as they remain shareholders.
- During the term of the domination agreement the dominating shareholder has to compensate the target company for any annual loss it suffers.

In addition to a domination agreement, a profit and loss pooling agreement may be entered into. It is concluded the same way as a domination agreement and is usually agreed upon at the same time. The legal consequences of a profit and loss pooling agreement are similar to those of a domination agreement. The main advantage of entering into a separate profit and loss pooling agreement is the creation of a fiscal unity for tax purposes.

8. Voluntary delisting

A voluntary delisting is only admissible if an unconditional offer is made to all remaining shareholders to sell their shares at a certain minimum price (in cash) prior to the implementation of the delisting (see section 4.4 above for further information on delisting bids).

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Manuel Metzner and Christoph Wolf in Frankfurt and Dirk Horcher in Munich are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Germany.

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Hong Kong

1. Overview

The market for the mergers and acquisitions of public companies in Hong Kong has been robust in recent years.

2. General Legal Framework

2.1 Legal framework and key regulatory bodies

Public takeovers and mergers in Hong Kong are principally regulated by a number of rules and legislation, including:

- The Hong Kong Code on Takeovers and Mergers ("**Takeovers Code**"), which applies to takeovers and mergers affecting public companies in Hong Kong and companies and real estate investment trusts with a primary listing in Hong Kong. It sets out the main rules and principles relating to public takeovers and mergers in Hong Kong.

  The Takeovers Code does not have the force of law. It is administered by the Executive Director of the Hong Kong Securities and Futures Commission ("**SFC**"), who may bring disciplinary proceedings for breach of the Takeovers Code before the Takeovers and Mergers Panel ("**Takeovers Panel**"). The Takeovers Panel can impose sanctions (including public censure, public criticism, requiring licensed corporations and financial markets service providers to cease acting for persons in breach, banning advisers from appearing before the SFC or the Takeovers Panel for a stated period of time and requiring compensation to be paid to holders or former holder of securities of listed companies).

- The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (collectively, "**Listing Rules**"), which apply to companies whose securities are listed on the Main Board or GEM, as the case may be, of The Stock Exchange of Hong Kong Limited ("**Stock Exchange**"). The Listing Rules set out the disclosure and approval requirements in respect of transactions undertaken by the listed companies.

  The Listing Rules do not have the force of law. They are enforced by the Stock Exchange's imposition of a wide range of sanctions, including private reprimand, public censure, referral to the SFC and other relevant regulatory bodies, exclusion from the market for a stated period and, ultimately, suspension or cancellation of a company's listing (the latter being very rarely applied).

- The Companies Ordinance (Chapter 622 of the Laws of Hong Kong), which regulates compulsory acquisitions and schemes of arrangement for companies incorporated in Hong Kong ("**Companies Ordinance**").

- The Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) ("**SFO**"), which establishes a statutory disclosure regime whereby listed companies are required to disclose inside information in a timely manner. It also regulates the disclosure of interests in the securities of listed companies, insider dealing and other market misconduct in relation to the listed securities and their derivatives.

2.2 General principles

The following general principles are set out in the Takeovers Code to ensure fair treatment for shareholders who are affected by takeover and merger transactions:

(a) all shareholders are to be treated equally and all shareholders of the same class are to be treated similarly;

(b) if control of a company changes, a general offer to all other shareholders is normally required;

(c) during the course of an offer or when an offer is in contemplation, information must be made available to all shareholders, save for the furnishing of information in confidence by the target company to a potential bidder or vice versa;

(d) a bidder should announce an offer after ensuring that it will be able to implement the offer in full;

(e) shareholders should be given sufficient information, advice and time to reach an informed decision on an offer. All documents relating to an offer must be prepared with the highest possible degree of care, responsibility and accuracy;

(f) all parties involved in an offer should make full and prompt disclosure of all relevant information and take precaution to avoid making statements which may mislead shareholders or the market;

(g) rights of control should be exercised in good faith and oppression of minority shareholders is unacceptable;

(h) directors of the bidder company and the target company should have regard to the interests of their shareholders as a whole and not have regard to their personal or family shareholdings or to their personal relationships with the companies;

(i) the target board should not take actions to frustrate a proposed offer or deny the shareholders the opportunity to decide on its merits; and

(j) all parties involved in takeovers and mergers are required to cooperate to the fullest possible extent with the SFC, the Takeovers Panel and the Takeovers Appeal Committee.

2.3 Foreign investment restrictions

See 3.4 below.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of some of the different rights and powers that are attached to different levels of shareholding in a Hong Kong incorporated listed company:

Shareholding	Rights
One share	• The right to attend and vote at general meetings. • The right to receive dividends.

Shareholding	Rights
	• The right to receive a distribution in a liquidation once the creditors have been repaid. • The right to receive a copy of the reporting documents for each financial year, such as annual audited accounts with the directors' report and auditor's report, as well as circulars providing further details on the resolutions to be proposed at the annual general meetings and notices of the meetings. • The right to inspect the company's registers such as registers of members, directors, company secretaries and debenture holders, its records of resolutions and meetings, and copies of certain management contracts. • The right to file a minority claim against the directors on behalf of the company.
2.5%	• The right to apply to the court for an order allowing the shareholder to inspect the company's records or documents. • The right to propose resolutions to be moved at an annual general meeting, and to request circulation of statements concerning the business to be dealt with at a general meeting.
5%	• The right to request the directors to call a general meeting, and, upon the directors' failure to do so, to call the meeting. • The right to apply to the court to cancel an alteration to the objects as stated in the articles of association.
10%	• The right to call a general meeting by any two or more shareholders holding 10% of the total voting rights at general meetings if the company has no directors or an insufficient number of directors to form a quorum. • The right to apply to the court to have a variation of class rights (in the same class as the shareholder) set aside.
More than 25% (at a general meeting)	The ability at a general meeting to block resolutions which require a 75% special majority.
More than 50% (at a general meeting)	The ability at a general meeting: • to appoint and remove directors; • to appoint and remove auditors and to approve their remuneration; • to approve the annual financial statements (including the directors' report and auditor's report); • to alter the articles of association in relation to the maximum number of shares the company can issue;

Shareholding	Rights
	• to approve capital increases; • to authorize the provision of financial assistance for the acquisition of the company's own shares; • to approve certain transactions which require shareholders' approval under the Takeovers Code, e.g., special deals and frustrating actions, and under the Listing Rules, e.g., certain notifiable transactions and connected transactions, a rights issue that would increase the number of issued shares or the market capitalization of the company by more than 50% and an open offer where the securities are not issued under the authority of a general mandate, provided that the shareholder is entitled to vote according to the Takeovers Code and the Listing Rules (as the case may be) (this is applicable to listed companies generally, whether they are incorporated in Hong Kong or not); and • to take decisions for which no special majority of 75% is required.
75% (at a general meeting)	The ability at a general meeting: • to change or alter the company's name, objects and articles of association; • to authorize an off-market share buyback or a capital reduction; • to sanction a variation of class rights; • to approve takeover and privatization schemes (subject to the votes cast against them not exceeding 10% of the total voting rights attached to all disinterested shares) (see 8.1 below) and delisting; • to approve a whitewash waiver under the Takeovers Code (see 3.5 below); • to approve an amalgamation; and • to wind up the company.
90%	The possibility of forcing all other shareholders to sell their shares through a public bid (a "**squeeze-out**") (see 7.1 below).

3.2 Restrictions and careful planning

The key issues and restrictions associated with the acquisition of a controlling stake in a listed company in Hong Kong are summarized below. Some careful planning is therefore necessary if a bidder or a target company intends to start a process that may lead to a public takeover bid.

Hong Kong laws and regulations contain a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, prior due diligence by a bidder and announcements of a potential takeover bid by a bidder or a target company.

3.3 Due diligence and non-disclosure undertaking

The Takeovers Code does not contain specific rules on whether or not prior due diligence can be organized or how such due diligence is to be organized. Nevertheless, the concept of prior due diligence or pre-acquisition review by a bidder is generally accepted by the market (and by the SFC and the Stock Exchange as well), and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures and data rooms.

The due diligence review typically covers financial, business, legal and operational aspects, whether through the target company's response to the bidder's request for provision of information or through information in the public domain obtained by the bidder, or both. The due diligence review should seek to enable the bidder to understand and assess the obligations it will assume, the nature and extent of the target company's contingent liabilities, title to the target company's assets, third party consents and regulatory or industry approvals required, the potential growth of the target company and litigations risks.

It is common for the target company, and important from the legal compliance perspective of the target company, to secure, at an early stage, a non-disclosure undertaking from the bidder before providing any non-public information relating to the target company for pre-acquisition review or conducting any further discussions or negotiations of the terms of the public takeover bid. The target company must, however, be mindful not to selectively disclose its inside information to the bidder. For the definition of inside information, please see 3.9 below.

3.4 Investor rights and restrictions

Before building a stake in a listed company in Hong Kong, the bidder should, as part of its pre-acquisition due diligence, ascertain if there is any merger control, foreign ownership control or restrictions, or industry specific approval applicable to the industry in which the listed company operates.

- Foreign ownership restrictions – There are generally no restrictions on foreign ownership of shares in Hong Kong, except for companies in specific industries, such as broadcasting licensees.
- Merger control regime – Mergers involving one or more parties that directly or indirectly own or control a Hong Kong telecommunication carrier licensee are subject to Hong Kong's merger control regime.
- Industry specific restrictions – Specific regulated industries, such as banking, insurance, securities, telecommunications and broadcasting industries, are subject to certain ownership and control restrictions and approvals by the regulator of the relevant industry.

3.5 Methods of acquisition

The bidder can acquire a controlling stake in a listed company in Hong Kong by:

- purchasing existing shares from a shareholder of the listed company (a "**Share Purchase**"); or
- subscribing for new shares to be issued by the listed company (a "**Share Subscription**").

In a Share Purchase, the total number of shares of the listed company will remain unchanged after the bidder's acquisition and the consideration will go directly to the selling shareholder. If, as a result of the Share Purchase, the bidder (either alone or in concert with others) holds 30% or more of voting shares in the listed company, the bidder is required to make a general offer to all other shareholders in the listed company.

In a Share Subscription, the total number of shares of the listed company will increase and the shareholdings of all existing shareholders in the listed company will be diluted as a result of the bidder's acquisition. The subscription money will go directly to the listed company. If, as a result of the Share Subscription, the bidder (either alone or in concert with others) holds 30% or more of voting shares ("**30% threshold"**) in the listed company, the bidder is required to make a general offer to all other shareholders in the listed company unless the SFC waives the general offer obligation (commonly referred to as the "**whitewash waiver**"). The bidder can make an application to the SFC for a whitewash waiver, which will be subject to independent shareholders' approval and compliance with certain regulatory requirements.

3.6 General considerations

- Funding

  If the bidder will be acquiring a stake which, as a result of the acquisition, will take it (either alone or in concert with others) to the 30% threshold, or which will trigger the creeper rule (as discussed in 4.1 below), the bidder must have committed funding to satisfy its acquisition of the target company shares, as well as all the remaining shares in the offer, at the time of the announcement of its firm intention to make an offer.

- Bidder is a listed company

  If the bidder is a listed company, it should comply with any requirement under the listing rules that may be applicable to it, such as reporting, disclosure and/or shareholders' approval. In the context of the Listing Rules, the application of such requirements will depend on the value of the stake to be acquired and the size of the target company relative to that of the bidder.

- Treasury shares

  Under the Takeovers Code, treasury shares are not considered as voting shares. They are excluded from the calculation of various thresholds, including the 30% threshold, the 2% threshold under the creeper rule, the acceptance condition (see 4.1 and 4.2 below), and disinterested shares (see 8.1 below).

3.7 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market manipulation remain applicable. The rules provide, among other things, that manipulation of the target company's stock and futures price, e.g., by creating misleading rumors, is prohibited. In addition, the insider dealing provisions prevent a bidder that has inside information regarding a target listed company from dealing in securities of the target listed company (other than in relation to launching the actual takeover bid). For the definition of inside information, please see 3.9 below. That being said, stake building for the sole purpose of the takeover bid is an exception to the insider dealing rule (see 6.1 below).

3.8 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Under the SFO, if a bidder starts building up a stake in a Hong Kong listed target company, it will be obliged to disclose its stake publicly by submitting a prescribed form electronically through the Disclosure of Interests Online System with the Stock Exchange if the bidder's interest in the voting shares has passed an applicable disclosure threshold. The key applicable disclosure thresholds for a bidder (who is not a director of the target company) include:

- Initial disclosure threshold: 5% interest (including an interest in the underlying shares of equity derivatives).
- Subsequent disclosure threshold:
    - increases or decreases in the interest across a percentage level, e.g., from 5.9% to 6.1%; or
    - 1% short position, and subsequent increases or decreases in the short position across a percentage level.

When determining whether or not a threshold has been passed, a bidder must also take into account the interest (or short position) in voting shares held by (a) such bidder's spouse and children under the age of 18, (b) related trusts, (c) corporations in which the bidder controls one-third of voting rights or the majority of its board of directors, and (d) parties who are regarded as its "concert parties" for the purposes of the disclosure of interests regime in the SFO, e.g., other parties to an agreement to which it is also a party that contains provisions for the acquisition by any one or more of them of interests in voting shares in the target company and that imposes obligations or restrictions on any one or more of them with respect to the use, retention or disposal of their interests in voting rights in the target company acquired in pursuance of the agreement. The concept of "concert parties" for the purposes of the disclosure of interests regime in the SFO is different from the definition of parties "acting in concert" under the Takeovers Code. Please see 4.1 below for the definition of "acting in concert" under the Takeovers Code.

3.9 Announcement by the target company

The target company must continue to comply with the statutory provisions and general rules regarding disclosure and transparency. These include the requirement that a Hong Kong listed company must immediately announce all inside information. The term "inside information" means specific information that is about:

- the listed company;
- a shareholder or officer of the listed company; or
- the listed securities of the listed company or their derivatives; and

is not generally known to persons who are accustomed or would be likely to deal in the listed securities of the listed company but would, if generally known to them, be likely to materially affect the price of the listed securities.

In practice, the question of whether or not a piece of information constitutes "inside information" is determined by the board of directors of the listed company.

The facts surrounding a potential public takeover bid may constitute inside information. If so, the primary obligation for making an announcement rests with the target company once its board has been approached. There are specific circumstances where the board of the target company must make an announcement, for instance, when a firm intention to make an offer is notified to the target company's board, or when the target company is the subject of rumor or speculation about a possible offer or there is undue movement in its share price or share turnover volume.

3.10 Launch of a public takeover bid

No one is permitted to announce the launch of a public takeover bid until the announcement has been approved by the SFC. This prohibition not only applies to a bidder, but also to the target company (even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.9 above).

Before the board of the target company is approached, the responsibility of making an announcement normally rests with the bidder. A bidder that intends to announce a public takeover bid must first inform the SFC of its intention and obtain the SFC's permission to make the announcement. If there are rumors or leaks that a bidder intends to launch a public takeover bid, the bidder must make an announcement.

3.11 Acting in concert

The majority of questions concerning interpretation of the Takeovers Code arise in relation to the concept of persons "acting in concert". For the definition of "acting in concert", please see 4.1 below.

4. Effecting a Takeover

There are two common forms of takeover bids in Hong Kong:

- mandatory general offer; and
- voluntary general offer.

In Hong Kong, most public takeover bids are friendly rather than hostile because many public companies in Hong Kong are either family-controlled or owned by shareholders with significant or controlling stakes.

4.1 Mandatory general offer

- Definition of "control" and trigger points for a mandatory general offer

  Under the Takeovers Code, "control" is deemed to mean a holding, or aggregate holdings, of 30% or more of the voting rights of a company.

  A mandatory general offer to all shareholders of the target company must be made where:

  - a bidder acquires shares which, when taken together with the shares already held by the bidder (alone or in concert with others), represent 30% or more of the voting rights of the target company; or
  - a bidder holding not less than 30% and not more than 50% of the voting rights of the target company acquires (either alone or in concert with others), in any period of 12 months, additional shares carrying more than 2% of the voting rights of the target company. This is commonly known as the "creeper rule".

- Concept of "acting in concert"

  For the purposes of the Takeovers Code, a person "acts in concert" with the bidder if, pursuant to an agreement or understanding (whether formal or informal), they actively cooperate, through the acquisition of voting rights by either of them, to obtain or consolidate control of the target company. Under the Takeovers Code, the definition of "acting in concert" is drafted in broad terms so that it may apply in a broad range of situations, but it does set out nine classes of persons who are presumed to be acting in concert unless the contrary is established. Evidence that parties are "acting in concert" may be direct or, more likely, may be inferred from circumstantial evidence where no single circumstance will necessarily be determinative.

- Offer price of a mandatory general offer
    - A mandatory general offer must be made in cash or be accompanied by a cash alternative at not less than the highest price paid by the bidder (either alone or in concert with others) for shares of that class during the offer period and within six months before the commencement of the offer period. If the voting rights were acquired for a consideration other than cash, the offer price must be determined by an independent valuation.
    - If, after an announcement of a firm intention to make an offer and during the offer period, the bidder (either alone or in concert with others) purchases shares of the target company at a price that is above the offer price, the bidder must increase the offer price to the highest price paid for such shares.
- Proof of funding requirement
    - Both the announcement of a firm intention to make an offer and the offer document itself must include a confirmation from the bidder's financial adviser that sufficient resources are available to the bidder to satisfy full acceptance of the offer.
    - In addition, the bidder's financial adviser must provide written confirmation to the SFC that it is satisfied that there are sufficient resources available to satisfy the bidder's obligations in respect of the offer.
- Conditions to a mandatory general offer
    - Except with the consent of the SFC, all general offers must be conditional upon the bidder having received acceptances which will result in the bidder (either alone or in concert with others) holding more than 50% of the voting rights of the target company. This is commonly referred to as the "acceptance condition".
    - Where the bidder holds more than 50% of the voting rights before the offer is made, an offer must normally be unconditional.
- Listing status of the target company

  If the bidder intends to maintain the listing status of the target company, the bidder should observe the public float requirement of the Listing Rules. This requires that at least 25% (or a lower percentage agreed by the Stock Exchange on initial listing) of the target company's securities must be in public hands.

4.2 Voluntary general offer

A voluntary general offer is an offer that a bidder voluntarily makes for all the shares of the target company. Any bidder may make a voluntary general offer provided that, during the course of a voluntary offer, it does not make any acquisition of voting rights in the target which triggers a mandatory general offer as discussed in 4.1 above.

- Offer price of a voluntary general offer
    - The offer price may be paid in cash, securities or a combination of the two.

    - However, if the bidder (either alone or in concert with others) has acquired shares in cash in the target company carrying 10% or more of the voting rights during the offer period and within six months before the commencement of the offer period, the offer price must be paid in cash, or accompanied by a cash alternative, at not less than the highest price paid for such shares. The SFC also has the discretion to require cash to be made available even where less than 10% has been purchased for cash in the six months before the offer period if the vendors are directors or other persons closely connected with the bidder or the target company.
    - On the other hand, if the bidder (either alone or in concert with others) has acquired shares in the target company carrying 10% or more of the voting rights in exchange for securities during the offer period and within three months before the commencement of the offer period, such securities are required to be offered to all other holders of shares of that class. Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer price has been posted to accepting shareholders, the bidder will also be required to make an offer in cash or to provide a cash alternative. In the case of a purchase in exchange for securities from directors or persons closely connected with the bidder or the target company, the SFC may require a securities offer on the same basis even where less than 10% has been purchased or where the purchase was made more than three months before the offer period.
    - The offer price may not be at a discount of more than 50% to the market price of the shares of the target company (being the lesser of the closing price of the shares on the trading day before the date of the announcement of a firm intention to make an offer under the Takeovers Code and the five-day average closing price before such day).
    - If, after an announcement of a firm intention to make an offer and during the offer period, the bidder (either alone or in concert with others) purchases shares of the target company at a price that is above the offer price, the bidder must increase the offer price to the highest price paid for such shares.
- Proof of funding requirement
    - Where the offer consists of cash or any other assets except new securities to be issued by the bidder, both the announcement of a firm intention to make an offer and the offer document itself must include confirmation from the bidder's financial adviser that sufficient resources are available to the bidder to satisfy full acceptance of the offer.
    - In addition, the bidder's financial adviser must provide written confirmation to the SFC that it is satisfied that there are sufficient resources available to satisfy the bidder's obligations in respect of the offer.
- Conditions to a voluntary general offer
    - A voluntary general offer may be made subject to any conditions except those which depend on the bidder's own judgment or the fulfilment of which is in its control or at its discretion.
    - Except with the consent of the SFC, all general offers must be conditional upon the bidder having received acceptances which will result in the bidder

(either alone or in concert with others) holding more than 50% of the voting rights of the target company. A voluntary general offer may be made conditional upon an acceptance level of shares carrying a higher percentage of the voting rights, failing which the bidder is entitled to withdraw the offer.

- However, when setting the acceptance level, if the bidder intends to maintain the listing status of the target company, the bidder should observe the public float requirement of the Listing Rules, which requires that at least 25% (or a lower percentage agreed by the Stock Exchange on initial listing) of the target company's securities must be in public hands.

5. Timeline

5.1 Disclosure of shareholdings

As a general rule, the timeline for a mandatory general offer is similar to the timeline of a voluntary general offer, with certain exceptions. The table below contains a timeline of a typical mandatory general offer.

Step
1. Preparatory stage: • Preparation of the bid by the bidder (feasibility study, due diligence and financing). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.

2. Announcement:
• The bidder makes an announcement of a firm intention to make an offer, setting out the terms of the offer and other details required under the Takeovers Code. Once such announcement is made, the bidder can no longer withdraw the bid (except with the consent of the SFC and in certain limited circumstances, such as in the event of a competing offer).
• Before an announcement of a firm intention to make an offer is made, there may be circumstances where the bidder/potential bidder, the target company or the potential vendor must make an announcement of a possible offer when, for example:
  • the target company is the subject of rumor or speculation about a possible offer;
  • there is undue movement in the target company's share price or volume of share turnover; or
  • negotiations or discussions are about to be extended to include more than a very restricted number of people.

3. Day 0: Despatch of an offer document or a composite document (combining the offer document and the target board circular):

Step
• no later than 21 days after the date of announcement of the terms of the offer (for cash offer); or • no later than 35 days after the date of the announcement of the terms of the offer (for securities exchange offer).
4. Day 14: Last day for posting of the target board circular if it is not combined in a composite document (or not posted on the same day as the offer document on Day 0).
5. Day 21: First permitted closing date if the target board circular is combined in a composite document (or despatched on the same day as the offer document).
6. Day 28: First permitted closing date if the target board circular is not combined in a composite document (or despatched after the date on which the offer document is posted).
7. Day 39: Last day for the target company to announce new material information (including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments or for any material acquisition, disposal or major transactions).
8. Day 46: Last day for revision of the offer if the offer has not by then become unconditional as to acceptances.
9. Day 60: Last day for the offer to become or be declared unconditional as to acceptances and such day cannot be extended (except with the consent of the SFC and in certain limited circumstances, such as in the event of a competing offer). In any event, Day 60 must not exceed four months after the date of the initial offer document. Last day for accepting shareholders to withdraw their acceptance.
10. Day 81: Last day for all conditions to the offer to be fulfilled or the offer must lapse.
11. Payment of offer price: The bidder must pay the offer price to accepting shareholders no later than seven business days after the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance.

5.2 Competing bid

If a competing offer has been announced, both bidders will normally be bound by the timetable established by the posting of the competing offer document. If a competitive situation continues to exist in the later stages of the offer period, the SFC will normally require revised offers to be published in accordance with an auction procedure, the terms of which will be determined by the SFC. That procedure will normally require final revisions to competing offers to be announced by the 46th day following the posting of the competing offer document, but will enable a bidder to revise its offer within a set period in response to any revision announced by a competing bidder on or after the 46th day. The SFC will consider applying any alternative procedure which is agreed between competing bidders and the target board.

Set out below is an overview of the main steps for a mandatory general offer in Hong Kong.

Mandatory general offer (indicative timetable)

Start process	
A Day	Announce a firm intention to make an offer
Day 0	Despatch an offer document or a composite document (combining the offer document and the target board circular)
Day 14	Last day for despatch of the target board circular if it is not combined in a composite document (or not despatched on Day 0)
Day 21	First day offer can be closed if the target board circular is combined in a composite document (or despatched on Day 0)
Day 28	First day offer can close if the target board circular is not combined in a composite document (or despatched after the date on which the offer document is despatched)
Day 39	Last day for the target company to announce material new information
Day 46	Last day bidder can revise the offer (if it has not become unconditional as to acceptance)
Day 60	Last day for the offer to become or be declared unconditional as to acceptances Last day for accepting shareholders to withdraw their acceptance
Day 81	Last day to satisfy/waive all conditions – offer goes "wholly unconditional" or lapses
Payment of offer price	Last day to pay consideration to accepting shareholders

No later than 21 days after the date of the announcement of the terms of the offer (for cash offer); or

No later than 35 days after the date of the announcement of the terms of the offer (for securities exchange offer)

No later than 7 business days after the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance

6. Takeover Tactics

6.1 Stake building

Generally, a bidder may build its stake in the target company either by acquiring a large stake from a substantial shareholder or by making direct purchases from the stock market, subject to the following restrictions, obligations and requirements.

If and when the bidder possesses any inside information on a listed target, it must not deal in the listed securities (or their derivatives) until the inside information is publicly announced. Otherwise, the bidder will be deemed to have committed insider dealing. For the definition of inside information, please see 3.9 above. However, if the bidder is about to launch a takeover bid, they are not restricted from dealing in the listed securities (or their derivatives) for the sole purpose of the takeover bid. Besides, an off-market transaction in the listed securities (or their derivatives) entered into directly between the bidder and other parties, each of which is in possession of the same inside information, is exempt from the insider dealing prohibitions.

Please see 3.8 above on the disclosure obligations on acquiring a shareholding in a Hong Kong listed target company and the applicable disclosure thresholds.

If the stake building crosses the 30% threshold or the 2% threshold under the creeper rule contained in the Takeovers Code (see 4.1 above), the bidder must make a mandatory general offer to all shareholders to acquire the remaining shares not held by it or its concert parties.

If the bidder is a Hong Kong listed company, it may be subject to the disclosure and/or shareholders' approval requirements under the Listing Rules, depending on the offer price and the size of the target company compared to that of the bidder.

6.2 Deal protection methods

(a) Irrevocable commitments

A bidder may seek irrevocable commitments from shareholders of the target company with significant or controlling stakes to accept the offer or to vote in favor of the resolution approving the scheme of arrangement.

Under the Takeovers Code, a bidder may approach up to six shareholders of the target company to obtain irrevocable commitments in connection with the offer. An offeror does not have to consult the SFC in advance before approaching a shareholder with a material interest (i.e. either alone or in concert with others controlling 5% or more of the voting rights) in the target company. In all other cases, the bidder must first obtain the SFC's consent before making any approach to any shareholder of the target company to obtain such an irrevocable commitment. The SFC would normally impose conditions, including that shareholders may only be approached within a limited period that is pre-agreed with the SFC before an announcement of a firm intention to make an offer is published. The bidder can only reveal to any shareholder who is approached information that is already public (i.e. in a possible offer announcement), and information that is contained in the draft announcement of a firm intention to make an offer where the SFC has indicated it has no substantive comments. If an announcement of a firm intention to make an offer has been issued, there is no restriction on the number of shareholders who may be approached, as long as they only receive public information and the Takeovers Code requirements for meetings between representatives of the offeror and shareholders are met. In all cases, the SFC expects the bidder and its advisers to maintain secrecy before any announcement of an offer. They should make appropriate arrangements and take utmost care to minimize information leakage.

(b) Inducement/break fee

A bidder and the target company may agree an inducement or break fee payable by the target company upon the occurrence of specified events which prevent the offer from proceeding or cause it to fail, e.g., if the target board recommends a higher competing offer.

Under the Takeovers Code, such an inducement or break fee must be of minimal value (normally no more than 1% of the offer value). The target board and its financial adviser must confirm to the SFC in writing that they believe that the fee is in the best interests of shareholders of the target company. Any inducement or break fee arrangement must be fully disclosed in the announcement of a firm intention to make an offer and in the offer document. The SFC should be consulted in all cases where an inducement or break fee, or any similar arrangement, is proposed.

6.3 Anti-takeover defenses

Under the Takeovers Code, once a bona fide offer has been communicated to the target board or the target company has reason to believe that a bona fide offer may be imminent, the target board may not take any action to frustrate a proposed offer or deny the shareholders the opportunity to consider it without the shareholders' approval in a general meeting or the bidder's consent. Without such approval or consent, the target board must not carry out or agree to carry out frustrating actions. Examples of frustating actions include:

- issuance of shares;
- creation, issuance or granting, or permitting the creation, issuance or granting of, any convertible securities, options or warrants in respect of shares in the target company;
- sale, disposal or acquisition of assets of a material amount;
- entering into contracts, including service contracts, other than in the ordinary course of business; or
- causing the target company or any subsidiary or associated company to purchase or redeem any shares in the target company or provide financial assistance for any such purchase.

As a result, the target board has limited anti-takeover defenses. Possible anti-takeover defenses include:

- stating its views against the offer and its recommendation to the shareholders to reject the offer in the target board circular;
- approaching other investors and, after consulting the SFC, proposing an inducement fee to solicit a higher competing offer. Please see 6.2 above for requirements in respect of inducement fees under the Takeovers Code; and
- seeking approvals from its shareholders to undertake frustrating actions.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, within four months following a takeover offer, the bidder (either alone or in concert with others) holds 90% in number of the shares to which the takeover offer relates in the Hong Kong incorporated target company (the "**90% threshold**"), the bidder can give a squeeze-out notice to compel shareholders who have not accepted the takeover offer to sell the remaining shares to the bidder. A shareholder can, however, apply to the court for an order stating that the bidder is not entitled to acquire the shares or for an order varying the terms of the acquisition. Absent such an application, the bidder is bound to acquire the remaining shares after giving the squeeze-out notice.

7.2 Sell-out

If, following a takeover offer, the bidder (either alone or in concert with others) holds shares in the Hong Kong incorporated target company that reaches the 90% threshold, a shareholder who has not accepted the takeover offer may, by a letter addressed to the bidder, require the bidder to acquire its shares. Where the minority shareholder exercises its right to be bought out, the bidder is bound to acquire the remaining shares.

7.3 Restrictions on acquiring securities after the takeover bid period

If an offer is withdrawn or lapses before it becomes unconditional, the bidder is restricted, for a period of 12 months, from launching a new offer or acquiring shares that trigger a mandatory general offer. In addition, where a privatization offer has been unsuccessful, the bidder will normally be precluded from buying any shares in the target company within 12 months after the offer lapses if the result would be a delisting of the target company's shares on the Stock Exchange (unless previously approved by shareholders in accordance with the Listing Rules).

8. Delisting

8.1 Methods

The methods that can be used to delist and take a public company private in Hong Kong (commonly referred to as "**privatization**") are:

- scheme of arrangement;
- general offer plus compulsory acquisition, i.e., squeeze-out (see 7.1 above);
- general offer plus shareholders' approval for delisting; and
- capital reorganization plus shareholders' approval for delisting.

A scheme of arrangement is a court sanctioned arrangement with shareholders to cancel or transfer to a bidder all the shares in the target company. The court may sanction and permit the scheme of a Hong Kong incorporated listed company if at least 75% of the voting rights of the shareholders present and voting at the court-directed shareholders' meeting vote in favor of the scheme at the meeting (and not more than 10% of the total voting rights attached to all "disinterested shares" vote against the scheme at the meeting). If the listed company concerned is not a Hong Kong incorporated company, the local laws may also require the scheme to be approved by a majority in number of the shareholders voting at the shareholders' meeting (commonly referred to as the "**headcount test**").

In addition to satisfying the voting requirements imposed by law, the Takeovers Code requires that (a) 75% or more of the votes attaching to the "disinterested shares" cast at a duly convened meeting of shareholders agree to the scheme; and (b) the number of votes cast against the scheme at such meeting is not more than 10% of the votes attaching to all "disinterested shares". The concept of "disinterested shares" for the purposes of the Takeovers Code is different from the definition of "disinterested shares" under the Companies Ordinance. Under the Takeovers Code, the term "disinterested shares" is defined to mean shares in the target company other than those which are owned by the bidder or persons acting in concert with it.

As a scheme of arrangement is implemented by the target company, it is not appropriate for hostile bids.

The scheme of arrangement is the most commonly seen privatization method in Hong Kong. Some reasons for this are the "all-or-nothing" nature of a scheme and the Hong Kong stamp duty savings that may ensue from a scheme involving the cancellation of shares in the target company.

8.2 Delisting

In Hong Kong, following a successful privatization through a scheme of arrangement or a squeeze-out, a Hong Kong listed company can voluntarily withdraw its listing on the Stock Exchange.

A Hong Kong listed company can also voluntarily withdraw its listing on the Stock Exchange following a general offer, a capital reorganization or in other specific circumstances. Such voluntary withdrawal will be subject to shareholders' approval and other regulatory requirements, depending on whether or not the listed company has an alternative listing.

A listed company must give its shareholders notice of the proposed withdrawal of listing by way of an announcement, and the intention not to retain the listing must be stated in a circular to the shareholders.

8.3 Take-private transactions

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Christina Lee, Wang Hang, Bonnie Lau and Yolanda Zheng are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Hong Kong.

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Hungary

1. Overview

Hungary is politically and economically integrated into Europe and is a member of the European Union, NATO and various other international organizations. Thanks to its central location between Western and Eastern Europe, it provides access to almost the entire European market and, as a consequence of the moderate wage rates, high level of education, investment-friendly legal rules and taxation system, Hungary has become an ideal location to pursue various business investments.

The Hungarian public M&A market has been relatively slow in the last couple of years, with only a few voluntary takeovers each year. Hostile takeover attempts are uncommon in Hungary.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Hungarian law relating to public takeover bids can be found in:

- Act CXX of 2001 on the Capital Market ("**Capital Market Act**"); and
- Act V of 2013 on the Civil Code ("**Civil Code**").

The Hungarian takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Hungary, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are based on Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014, on market abuse ("**Market Abuse Regulation**") and related EU legislation. For further information, see 6.3 below.

(c) The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are based on Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ("**Prospectus Regulation**") and related EU legislation.

(d) The general rules on the supervision and control over the financial markets.

(e) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement by the National Bank of Hungary

Public takeover bids are subject to the supervision and control of the National Bank of Hungary. The National Bank of Hungary is the principal securities regulator in Hungary.

The National Bank of Hungary has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, in certain specific cases, criminal sanctions could be imposed by the courts in case of non-compliance.

2.4 Foreign investment regulations

Foreign investments are generally not restricted in Hungary. Unless in the context of specific industries and sectors, takeovers are not subject to prior governmental or regulatory approvals, and do not generally fall under mandatory notification requirements, other than customary anti-trust approvals.

Since May 2020 in Hungary there are two separate foreign investment regimes (hereinafter referred to as "**FIR**") which may be applicable to takeovers if the target companies pursue certain activities:

(a) the Permanent Regime (hereinafter referred to as "**FIR_1**"): regarding investments made in certain strategic sectors that are important for the national security of Hungary[1]; and

(b) the Temporary Regime (hereinafter referred to as "**FIR_2**") which was originally introduced to mitigate the consequences of the COVID-19 pandemic during the state of emergency[2], but is still in force with the same fundamental concepts.[3]

The two FIRs may be applicable in parallel to each other and a foreign investment falling within the scope of one or both FIRs may not be completed without the prior acknowledgement of the competent Hungarian minister.

Regarding the relevant sectors and activities, the FIR_2 lists the NACE codes of the business activities which trigger the notification obligation[4]. If the target company pursues any business activities falling under any of such NACE codes or if any of such business activities are indicated in the Hungarian company register as a business activity of the target company, the FIR_2 must be considered. The FIR_1 is applicable if the target company pursues certain activities set out in the Foreign Investment Screening Act. Such activities include, among others: (a) manufacture of weapons, parts of weapons, munition, military tools; (b) manufacture of dual use products; (c) manufacture of certain classified equipment used by secret intelligence services; (d) data processing

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[1] Act LVII of 2018 on the screening of foreign investments harming Hungary's security interests ("**Foreign Investment Screening Act**") and Government Decree no. 246/2018. (XII. 17.) implementing the Foreign Investment Screening Act.

[2] Act LVIII of 2020 on temporary rules and epidemic preparedness in connection with the end of the state of emergency.

[3] Since 1 November 2022 replaced by the Government Decree no. 561/2022 (XII.23.) on the different application during an emergency of certain provisions necessary for the economic protection of companies in Hungary.

[4] Annex 1 to Government Decree No. 561/2022 (XII. 23).

by a financial institution operating the central credit information system and operation of payment systems, excluding the operation in respect of payment transactions exclusively executed with cash-substitute payment instruments; (e) if any of the following listed activities affect an activity that is essential for the maintenance of vital societal functions, such as healthcare, preservation of life and property of citizens, provision of economic and social public services where disruption would have a significant impact, including: (i) transfer and distribution of electricity and system operation, and electricity production by a power plant of at least 50 MW capacity; (ii) distribution, storage, transport of natural gas and system operation; and (iii) outsourcing and development of the public water supply; (f) provision of electronic communications services; (g) the design, development or operation of electronic information systems for specific public and local government bodies; and (h) insurance and reinsurance activities, and specific notifiable activities directly related to insurance activities.

2.5 General principles

The following general principles apply to public takeovers in Hungary. These rules are based on the Takeover Directive:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must only announce a bid after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Hungarian listed corporation:

Rights	Rights
One share	• The right to attend, request information and vote at shareholders' meetings.

Rights	Rights
	• The right to obtain a copy of the documentation submitted to or information in relation to the agenda items of the shareholders' meetings. • The right to submit questions to the directors and statutory auditors at shareholders' meetings. • The right to request the nullity of decisions of shareholders' meetings. • The right to participate in or leave the company in connection with a merger or demerger.
Shares representing 1% of its share capital	• The right to request the board of directors or, subject to certain conditions, the court of registration to convene a shareholders' meeting with specific predetermined agenda. • The right to file a minority claim against the directors on behalf of the company. • The right to ask, subject to certain conditions, the court of registration to appoint an auditor to check (i) the company's last financial statements, (ii) any business event or indebtedness occurred as a result of the management activities in the last 2 years or (iii) any payment by the company to a shareholder or group of shareholders. • The right to put additional items on the agenda of a shareholders' meeting and to table draft resolutions for items on the agenda.
More than 25% (at a shareholders' meeting)	The ability at a shareholders' meeting to block: • any other changes to the articles of association, transformation of the company to a private company, transformation of the company to another company form, mergers, de-mergers, capital reductions and dissolution of the company; • the authorization to the board of directors to increase the company's share capital without further shareholder approval (the so-called "**authorized capital**"); and • the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or warrants.
More than 50% (at a shareholders' meeting)	The ability at a shareholders' meeting: • to appoint and dismiss directors or members of the supervisory board and to approve the remuneration and, as relevant, severance package of directors; • to appoint and dismiss statutory auditors and to approve their remuneration;

Rights	Rights
	• to approve the annual financial statements; • to grant discharge from liability to the directors for the performance of their mandate; and • to take decisions for which no special majority is required (see, inter alia, the matters listed in 3 above).
90%	The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**").

3.2 Restrictions and careful planning

Hungarian law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached thereto have passed an applicable disclosure threshold. The relevant disclosure thresholds in Hungary are:

- 5% and multiples of 5% (10%, 15%, etc.) up to 50%
- 75% and multiples of 5% up to 90%
- each additional 1% stake over 90% (91%, 92%, etc.)

Listed companies may also apply a lower threshold than the initial threshold of 5%. When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by (i) the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below), (ii) affiliates under the direct or indirect control of the bidder, (iii) close relatives of natural person bidders, (iv) a third party for the benefit of the bidder or (v) the bidder as a contractual security that allows the bidder to exercise voting rights.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must also announce these.

3.6 Announcements of a public takeover bid

A bidder that intends to announce a public takeover bid must first inform the National Bank of Hungary of its intention and the details of the bid, and obtain the National Bank of Hungary's approval. In addition, the bidder will, at that time, have to make the necessary filings for the actual launching of a public takeover bid, since as soon as the public takeover bid is announced, it can normally no longer be withdrawn, except in certain circumstances.

3.7 Early disclosures

Whenever required for the good functioning of the markets, the National Bank of Hungary has the right to request information from a person that could be involved in a possible public takeover bid. This type of disclosure may be requested even if the takeover bid cannot yet be formally launched, e.g., for practical purposes or due to merger control.

3.8 Due diligence

The Hungarian public takeover bid rules do not contain specific rules on whether or not a prior due diligence can be conducted, nor how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is theoretically accepted, provided that it can cope with potential market abuse and early disclosure concerns. Measures to address these may include the use of strict confidentiality procedures and data rooms.

3.9 Acting in concert

For the purposes of the Hungarian takeover bid rules, persons "act in concert" if they collaborate with the bidder, the target company or any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring the control over the target company or frustrating the success of a takeover bid.

Affiliates are deemed to act in concert or to have entered into an agreement to act in concert.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. For example, this is the case when a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. The members of the group will have a joint obligation to carry out a mandatory takeover bid (even if individual group members do not pass the relevant threshold) if one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass either (i) the 33% threshold or (ii) the 25% threshold in circumstances where no other person owns at least 10% of the voting rights.

4. Effecting a Takeover

There are three main forms of takeover bids in Hungary:

- a voluntary takeover bid, in which a bidder voluntarily makes an offer for a fixed number of voting securities issued by the target company (and securities issued by the company conferring the right to acquire voting securities of the target company);
- a mandatory takeover bid, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a (i) 33% threshold or (ii) 25% threshold in circumstances where no other person owns at least 10% of the voting rights; and
- a squeeze-out bid, in which a shareholder who 90% of the voting securities as a result of a takeover bid can squeeze- out the remaining holders of voting securities. This can be combined with a voluntary or mandatory takeover bid.

A bidder that intends to launch a takeover bid must engage an investment service provider, e.g., a financial institution, and include a draft prospectus in its notification to the National Bank of Hungary, as well as proof of certain funds.

4.1 Voluntary public takeover bid

- The bidder is free to make the takeover bid subject to merger control clearance, the prior approval of the National Bank of Hungary and certain other conditions precedent, such as a minimum acceptance level, a material adverse change condition or a force majeure clause. In case of voluntary takeover bids the following restrictions also apply:
  - no voluntary takeover bid may be submitted after the publication of a mandatory takeover bid and before the last day of the acceptance period of such bid;
  - the bidder, persons acting in concert with the bidder, or a third party acting on behalf of either of the aforementioned parties may not launch another voluntary takeover bid within six months following the conclusion of the original voluntary takeover bid;
  - no counter-bid may be submitted; and
  - if the number of shares offered in the declarations of acceptance exceeds the number to which the takeover bid pertains, the bidder may only allocate the shares on a pro rata basis (based on the face value of the shares offered).
- The bidder is, in principle, free to determine the form of consideration offered to the target shareholders:
  - the offered price may be paid in cash, securities or a combination of both;
  - if there are different categories of securities, different prices per category can only be due to the characteristics of such categories; and
  - during the takeover bid period (starting on the date indicated in the bidder's announcement which must be published after the bidder has received the approval of the National Bank of Hungary), the bidder or persons acting in concert with the bidder may not acquire or commit to acquire securities to which the takeover bid relates.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) intend to acquire, directly or indirectly, more than 25% (if no other person may own at least 10% of the voting securities) or more than 33% of the (actual outstanding) voting securities of the target company.
- A mandatory takeover bid is unconditional. However, the bidder may retain the right not to complete the transaction provided that, at the end of the acceptance period, the bidder would not acquire more than 50% of the voting securities in the target as a result of the bid. If the bidder wants to exercise such right it must include this condition in the prospectus.
- The main exceptions to the takeover bid obligation include situations where a stake of more than 25% is acquired but other persons may own at least 10% of the voting securities.
- In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary takeover bid. In addition:
    - The mandatory offer price must at least equal the higher of (i) the highest price paid or agreed to be paid by the bidder (or any person acting in concert with it) during a period of 180 calendar days preceding the announcement of the takeover bid, (ii) the weighted average trading price for the securities of the target company on the market during the last 180 or, if available, 360 calendar days prior to the moment giving rise to the public takeover bid obligation and (iii) the equity of the company per share.
    - The consideration offered can consist of cash, securities or a combination of both.

4.3 Follow-on squeeze-out and sell-out right

- Follow-on squeeze-out - a bidder will be able to squeeze out the residual minority shareholders at the end of the takeover bid if it holds, alone or in concert with others, 90% of the voting securities of the target.
- Sell-out right if the bidder is not itself launching a squeeze-out - minority shareholders have a sell-out right if, at the end of the takeover bid (or its reopening), the bidder holds, alone or in concert with others, 90% of the voting securities of the target.

5. Timeline

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under Hungarian law.

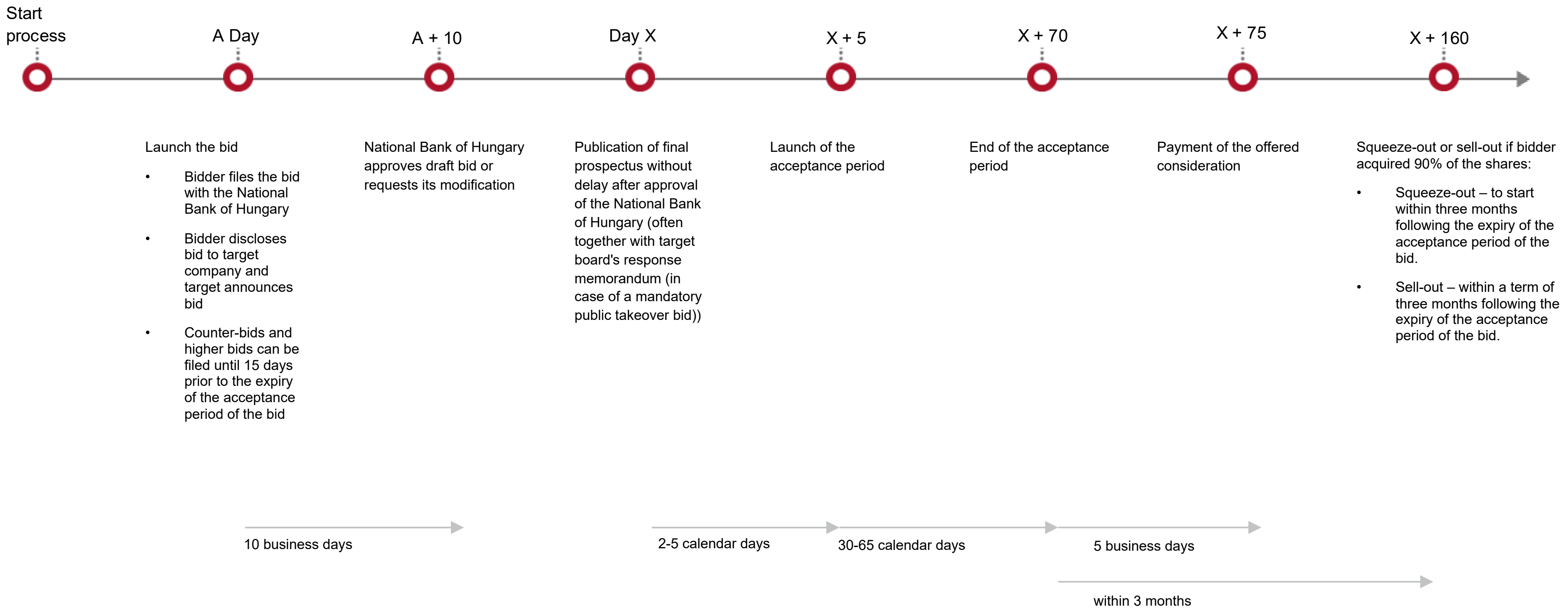
Step
1. Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft prospectus). • The bidder approaches the target and/or its key shareholders.

Step	
	• Negotiations with the target and/or its key shareholders. • The bidder engages an investment service provider.
2.	Launching of the bid: • The bidder files the bid with the National Bank of Hungary. The filing must contain, among other elements, proof of certain funds to pay the offer price and a draft prospectus. • Simultaneously with the above, the bidder discloses the bid to the target company and initiates its announcement by the target company. As of that moment, the bid is public, the bidder can no longer withdraw the bid (except in certain limited circumstances, such as in the event of a counter-bid or certain defensive actions by the target company) and the powers of the board of the target company are limited. • Counter-bids and higher bids can be filed (until 15 days prior to the expiry of the acceptance period of the bid, at the latest).
3.	The National Bank of Hungary will, within 10 business days, approve the draft bid that was filed with it or request its modification. In the latter case, the National Bank of Hungary will approve or reject the draft bid within three business days. Consultation of and information to employees is conducted in parallel.
4.	Response memorandum by the target's board: • The target's board must also involve the employee representative bodies. If the board has timely received the position of the employee representative bodies, this must be attached to the response memorandum. • The board must issue its response memorandum before the commencement of the bid acceptance period. • The board must also engage an independent financial expert to review and analyze the bid. The report of the independent expert must be attached to the response memorandum.
5.	Publication of final prospectus after approval of the National Bank of Hungary (often together with response memorandum).
6.	Launch of the acceptance period: • Start: two calendar days at the earliest but not later than five calendar days after the approval of the prospectus by the National Bank of Hungary. • Duration: not less than 30 calendar days and not more than 65 calendar days, including any extension. (upon the bidder's justified request, the National Bank of Hungary may extend the time limit for acceptance as specified in the takeover bid on one occasion, by a maximum period of 15 calendar days).
7.	Payment of the offered consideration by the bidder within five business days of the end of the acceptance period or of the receipt of the merger control clearance.
8.	Squeeze-out or sell-out if the bidder acquired 90% of the shares:

Step	
	• Squeeze-out – to start within three months following the expiry of the acceptance period of the bid. • Sell-out – within a term of three months following the expiry of the acceptance period of the bid.
9.	Payment of the offered consideration by the bidder.

Set out below is an overview of the main steps for a public takeover bid in Hungary.

Public takeover bid (indicative timeline)



Start process

A Day

Launch the bid

- Bidder files the bid with the National Bank of Hungary
- Bidder discloses bid to target company and target announces bid
- Counter-bids and higher bids can be filed until 15 days prior to the expiry of the acceptance period of the bid

A + 10

National Bank of Hungary approves draft bid or requests its modification

Day X

Publication of final prospectus without delay after approval of the National Bank of Hungary (often together with target board's response memorandum (in case of a mandatory public takeover bid))

X + 5

Launch of the acceptance period

X + 70

End of the acceptance period

X + 75

Payment of the offered consideration

X + 160

Squeeze-out or sell-out if bidder acquired 90% of the shares:

- Squeeze-out – to start within three months following the expiry of the acceptance period of the bid.
- Sell-out – within a term of three months following the expiry of the acceptance period of the bid.

10 business days

2-5 calendar days

30-65 calendar days

5 business days

within 3 months

6. Takeover Tactics

6.1 Inside information

A Hungarian public company has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public.

- "Inside information" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be "of a precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information that a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the target company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the announcement of a potential takeover bid must be made simultaneously with the submission of the takeover bid to the National Bank of Hungary for approval. This announcement must notify the public that the takeover bid is still subject to the approval of the National Bank of Hungary. Once the takeover bid is approved or rejected, the bidder must immediately initiate the announcement thereon.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Hungarian law is set forth in the Market Abuse Regulation and certain other EU legislation; the latter being mainly implemented by the Capital Market Act. As the framework is based on EU legislation, similar rules on insider dealing and market abuse exist in other jurisdictions of the EEA.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These mechanisms take into account the restrictions that apply to the board and shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase by the board (authorized capital)	• Requires an express authorization by the shareholders' meeting and the approval of the shareholders affected by the capital increase. The approval of the affected shareholders must be given as regulated in the articles of association. • The authorization is valid for a fixed term of a maximum of five years, but can be renewed. • The shareholders' resolution authorizing the capital increase must determine the maximum level of the capital up to which the board may decide on the increase. • May not be utilized if the articles of association prohibit the board from deciding on such defense mechanisms following the announcement of the bid.
2. Share buyback Share buyback "with a view to avoiding an imminent and serious harm" to the company.	• Requires an express authorization by the shareholders' meeting. • The authorization is valid for 18 months only, but can be renewed. • The total of directly and indirectly acquired shares may not exceed 25% of the share capital. • The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves. • Buybacks to be made in compliance with corporate, transparency and market (abuse) rules.
3. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• Assumes a stable shareholder base or reference shareholders. • Not regulated in detail under Hungarian law.
4. Preferential voting shares	• Requires the issuance of preferential shares incorporating multiple voting rights or veto rights. • Inclusion of the rules applicable to the preferential shares in the articles of association, by the founders upon the establishment or by a majority of 75% of the votes cast at a shareholders' meeting.

Mechanism	Assessment and considerations
5. Limitations on share transfers Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders.	• Inclusion in the articles of association requires an approval by a majority of 75% of the votes cast at a shareholders' meeting. • The articles of association must list the specific conditions and circumstances when the board may refuse to approve the transfer. • Exceptional for listed companies (listed securities are, in principle, freely transferable; impact on share liquidity).

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out (call option of bidder)

If, within three months following the takeover bid, the bidder (together with the persons with whom the Bidder acts in concert) holds 90% of voting rights and the bidder indicated in their original takeover bid that they are willing to utilize their call option, the Bidder can force all other holders of shares to transfer their shares to the bidder at the price which is the highest of (i) the price offered in the takeover bid or (ii) the proportional value of the equity (per share) based on the last audited annual financial statement of the company.

If the above conditions are met, the bidder must, within the three-month period after the conclusion of the takeover bid, notify the National Bank of Hungary and announce to the public that they have exercised the call option right and the conditions, including price, hand over process, etc., of the call option. In addition, the bidder must put the purchase price of the shares to be acquired into escrow.

The company will cancel any shares which are not handed over within the period determined in the announcement. The company will issue new shares in their stead and will transfer those shares to the bidder.

7.2 Sell-out (put option of the remaining shareholders)

If, following the takeover bid, the bidder (together with the persons with whom they act in concert) holds 90% of voting rights, then any remaining shareholders of the target company may request the bidder to buy the shareholders' shares at the price which is the highest of (i) the price offered in the takeover bid or (ii) the proportional value of the equity (per share) based on the last audited annual financial statements of the target company.

This right can be exercised in writing within 90 days following the expiry of the acceptance period of the bid.

7.3 Restrictions on acquiring securities after the voluntary takeover bid period

For six months after the end of the voluntary takeover bid period, the bidder and the persons acting in concert with the bidder cannot submit a new voluntary takeover bid.

8. Delisting

The delisting of shares traded on a regulated market must be decided by a 75% majority vote at a shareholders' meeting at which shareholders holding at least 50%+1 of the voting rights are present or represented. Shareholders with preferential voting shares representing multiple votes may only have one vote in this particular decision. The shareholders whose shares are affected by the delisting and who did not support the decision to delist may request the company, to purchase their shares at a price determined on the basis of the relevant Capital Market Act rules, within 60 days of the adoption of the shareholders' resolution to delist.

9. Contacts within Baker McKenzie

Ákos Fehérváry and József Vági in the Budapest office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Hungary.

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Indonesia

1. Overview

Indonesia is characterized by strong domestic consumption that has helped it to weather the global economic slowdown. Indonesia's capital markets authority, known as the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") (previously known as the Capital Market and Financial Institutions Supervisory Agency (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or "**Bapepam-LK**")), has introduced rules to strengthen its supervisory and enforcement capacity over Indonesia's capital markets and to promote sound and transparent capital markets. The OJK's actions in rearranging the regulatory framework could bolster the investment climate, particularly in the capital markets sector.

2. General Legal Framework

Indonesia's legal system is based on the European civil legal system. Mergers and acquisitions are strictly regulated by laws and regulations. Indonesian law is constantly evolving and the provisions are not always clear. In such cases, the law is usually clarified through implementing instruments like regulations or circulars. Otherwise, the interpretation of such unclear provisions is heavily influenced by the views and positions of the relevant government authorities.

In addition, there will most likely be amendments to existing laws and regulations or new laws and regulations in the near future.

2.1 Practice and regulatory procedure

The practices, procedures and policies of the relevant Indonesian government agencies, including the Ministry of Law, Bank Indonesia, the OJK and the Ministry of Downstreaming and Investment/Capital Investment Coordination Board (*Kementerian Hilirisasi dan Investasi/Badan Koordinasi Penanaman Modal* or "**BKPM**") through the Online Single Submission ("**OSS**"), and in some cases, the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*) are as important in consummating a transaction as the Indonesian laws governing M&A.

(a) Company Law and M&A regulations

The Company Law is provided in Law No. 40 of 2007 on Limited Liability Companies (as amended) ("**Company Law**") and it sets out a statutory framework for the combination of businesses conducted through limited liability companies. The Company Law promotes fair competition and the protection of minority shareholders. It also considers the interests of the company, its employees and the general public.

(b) Capital Markets Law

Where a merger or acquisition proposal involves a public company, the companies involved are also required to comply with the general requirements of Law No. 8 of 1995 on Capital Markets (as amended) ("**Capital Markets Law**") and the regulations of the OJK.

The OJK issues new regulations on a regular basis as the capital market sector continues to mature. The regulations can be accessed through the OJK's website at http://www.ojk.go.id.

(c) Other laws

For M&A involving certain sectors/industries, public companies must also follow the specific laws and regulations governing those sectors/industries, e.g., banking, insurance, financing, mining, broadcasting and telecommunications.

2.2 Types of transactions

The Company Law succinctly defines and differentiates between the concepts of merger, consolidation, spin-off and acquisition.

- A merger is a legal act executed by one or more companies to merge with an existing company(ies), which causes the dissolution of the merging company(ies) but the continuing existence of the surviving company.
- A consolidation is a legal act executed by two or more companies to fuse together, forming a new company, followed by the dissolution of both (or all) of the consolidating companies.
- A spin-off is a legal act whereby either:
  - all of the assets and liabilities of a company are transferred by law to two or more companies and the transferring company is dissolved by law; or
  - a part of the assets and liabilities of a company are transferred by law to one or more companies, while the transferring company still exists.
- An acquisition is a legal act executed by a legal entity (either a company or other entity) or by an individual to take over company's shares, whether existing or newly issued, which may cause a change in the control of the company. The Company Law does not specifically define the meaning of "control". However, in practice, the term is usually interpreted as the capacity to determine, directly or indirectly, in any way, the management or policies of the company concerned.

2.3 Public company considerations

A merger, consolidation, spin-off, acquisition or other corporate action involving one or more public companies are subject to additional requirements. In addition to complying with the Company Law, the Investment Law and other relevant laws that are applicable for private companies, such transactions are subject to more extensive corporate and disclosure requirements of the Capital Markets Law and its implementing regulations. These regulations include those issued by the OJK and PT Bursa Efek Indonesia (Indonesia Stock Exchange or "**IDX**") that are relevant to merger, consolidation, spin-off or acquisition of public companies.

There will be circumstances where the Capital Markets Law is not entirely clear, and thus further case-by-case clarification or confirmation with the OJK would be required.

Apart from the normal takeover route, there are other avenues through which investors can acquire a shareholding, including:

- Acquisition of a shareholding through a rights issue
- Acquisition of a shareholding through a private placement (non-pre-emptive rights issuance)
- Acquisition of a shareholding through a debt-to-equity swap

2.4 Foreign investment restrictions

Unless specifically provided under separate regulations, in theory, there are no limitations on the percentage of shares that can be held by foreigners as "indirect or portfolio investment". There is no specific definition of "indirect or portfolio investment". However, one may construe "indirect or portfolio investment" as a "non-controlling" investment. In 2021, the government issued the positive investment list replacing the 2016 negative investment list. The general principle of the positive investment list is that a business sector is open to 100% foreign investment unless it is subjected to a specific type of limitation or restriction. Please note that the limitations that are applicable for some business sectors may be provided in a separate instrument, apart from the positive investment list. Therefore, it is important to obtain detailed advice based on the latest market practice and policy that are relevant to the business sectors when making an assessment.

3. Before a Public Takeover Bid

3.1 Shareholders' rights

The following table describes the spectrum of "control" of public companies in Indonesia that investors should consider:

Shareholding Ownership	Key rights under the Company Law (subject to stricter provisions in the articles of association)
One share	• The right to file a lawsuit against the company if the shareholder has been harmed by actions of the company which it considers unfair and with no reasonable grounds, as a result of resolutions of the general meetings of shareholders, board of directors' meetings and/or board of commissioners' meetings of the company; • The right to request the company to purchase its shares at a fair price if the shareholder disagrees with certain actions taken by the company which cause losses to the company or the shareholder; • The right to access and inspect the register of shareholders, special register, minutes of general meetings of shareholders, circular resolutions, financial documents and other documents of the company; and • The right to request the dissolution of the company on the grounds that it is impossible to continue the company's operations.
At least 10% of the issued shares with voting rights	• The right to request that a general meeting of shareholders be convened; • The right to file a lawsuit on behalf of the company against the board of directors, the board of commissioners, a member of the board of directors or a member of the board of commissioners; and • The right to request that an examination be conducted into the company if there is "reason to suspect" that the company has committed an unlawful act which is detrimental to the shareholders or to third parties, or that the board of directors or the board of commissioners of the company have committed unlawful acts that are detrimental to the company, the shareholders or third parties.
More than 50% of the issued shares with voting rights	• The right to approve other matters that are required to be approved by the general meeting of shareholders but that are not subject to a higher threshold; • The right to appoint members of the board of directors and the board of commissioners; and

Shareholding Ownership	Key rights under the Company Law (subject to stricter provisions in the articles of association)
	• The right to approve an increase of paid up and issued capital.
At least 66.7% of the issued shares with voting rights	• The right to approve amendments to the articles of association of the company; • The right to approve an increase of the authorized capital; and • The right to approve a buyback or repurchase of shares and a reduction of capital of the company.
At least 75% of the issued shares with voting rights	• The right to approve the submission of a bankruptcy petition to the court; • The right to approve the dissolution of the company; and • The right to approve the transfer or encumbrance of all or more than one-half of the company's net assets in one accounting year, either in one or in a series of transactions.

3.2 Procedures for Trading Public Company Shares on the IDX

The sale and purchase of public company shares may be carried out in the regular, cash or negotiated markets on the IDX. Parties intending to trade shares should instruct brokers registered with the IDX. The transfer settlement is done through the C-BEST System in the Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia*).

3.3 Insider trading

Indonesian insider trading regulations are contained in Articles 95 to 99 of the Capital Markets Law and are quite restrictive. Generally, Indonesian insider trading regulations provide that individuals who obtain insider information due to their positions or professions, or due to business relationships with a public company, are considered to be insiders for a period of six months after the relationship ceases. "Insider information" means any material information[5] of a price-sensitive nature that an insider has and that is not yet available to the public.

Insiders in possession of insider information are prohibited from buying or selling securities of the public company, or of other companies engaged in transactions with the public company. The following individuals will be considered as insiders with respect to insider trading:

- Commissioners, directors or employees of a public company.
- Principal shareholder(s) of a public company (shareholders directly or indirectly holding 20% shares of the public company).
- Individuals who, due to their position, profession or business relationship with a public company, are able to obtain inside information.

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[5] Capital Markets Law defines "material information" as important and relevant information regarding events or occurrences that may affect the price of securities on the IDX, or the decisions of investors, financiers, prospective investors or financiers, or other interested parties.

- Parties who, within the six months before the relevant date, fell into one of the above categories.

If an insider wishes to sell its shares while holding insider information, this can only be done if the buyer has the same information. OJK Rule No. 78/POJK.04/2017 on Securities Trading That is Not Prohibited for Insiders ("**OJK Rule 78**") exempts off-the-exchange securities transactions between an insider in possession of insider information and a party who is a non-insider, so long as:

- All insider information must be disclosed to the party who is a non-insider.
- The party who is a non-insider cannot use the insider information other than for the purpose of transactions with that particular insider.
- The party who is a non-insider must make a written statement (sign a confidentiality agreement) that all the insider information obtained will be kept confidential and will not be used for purposes other than the proposed securities transaction with the relevant insider.
- The party who is a non-insider cannot trade in (i) the relevant public company's securities or (ii) the securities of other companies engaged in transactions with the public company, for a six-month period from the date the party who is a non-insider obtains that insider information, other than with the relevant insider.

Insiders and other parties conducting transactions that are exempted under OJK Rule 78, must submit a report to the OJK concerning the transaction within 10 calendar days after the completion of the transaction.

4. Effecting a Takeover

4.1 Triggering a "Takeover"

Under OJK Regulation No. 9/POJK.04/2018 dated 27 July 2018 on Takeovers of Public Companies, ("**Regulation 9/2018**"), a "takeover" of a public company is defined as an action directly or indirectly causing changes to the controller(s) of the public company. The controller of a public company is defined as the party(ies) that:

- owns more than 50% of the total issued and paid up share capital, directly or indirectly; or
- has the ability to determine, directly or indirectly, in any manner whatsoever, the management and/or the policies of the public company.

Regulation 9/2018 provides examples of documents or information evidencing control of the management of public companies. These documents or information include:

- an agreement between the shareholders that provides a shareholder with more than 50% of the voting rights in the public company
- a document that provides, or information that shows, the authority of a shareholder to regulate the financial and operational policies of the public company based on the articles of association or an agreement
- a document that provides, or information that shows, the authority of a shareholder to appoint or dismiss most members of the Board of Directors and the Board of Commissioners

- a document that provides, or information that shows, that a shareholder has the majority voting rights in the Board of Directors and Board of Commissioners meetings, and hence controls the public company
- a document that provides, or information that shows, other authority that indicates control over the public company

Any actions that result in a change in the controller(s) of a public company will trigger a mandatory tender offer. An increase in an investor's shareholding, where the investor is already a controller of a public company, does not constitute a change in control requiring a tender offer to be made (please see below).

4.2 Takeover to be followed by mandatory tender offer ("MTO")

Unless the takeover falls under an exemption, it must be followed by an MTO for all of the remaining shares, except for the:

- shares owned by the selling shareholder(s);
- shares owned by another party(ies) that the acquirer has offered to purchase under the same terms and conditions;
- shares owned by other parties that are also undertaking a (different) tender offer on the shares of the target company (a competing tender offer);
- shares owned by the principal shareholder(s), i.e., shareholders directly or indirectly holding 20% shares of the public company; and
- shares owned by other controlling shareholders of the target company.

The MTO process (submission of MTO statement to OJK, information disclosure, etc.) must start within two working days after the takeover announcement and must be implemented in accordance with Regulation 9/2018. The timeline for an MTO is as illustrated below.

4.3 Requirement to divest

Under Regulation 9/2018, if, as the result of the MTO being made after the takeover, the new controller owns more than 80% of the total paid-up capital of the target company, the new controller must, within two years after the completion of the MTO, transfer some of its shares to the public so that at least 20% of the total paid-up capital of the target company are owned by the public.

Regulation 9/2018 also stipulates that if, as a result of the takeover, the new controller owns more than 80% of the total paid-up capital of the target company, the new controller must, within two years after the completion of the MTO, transfer to the public at least the same amount of shares as it purchased during the MTO so that these shares are owned by the public.

The distinction between these two scenarios is that, in the first, the new controller does not obtain more than 80% in the initial takeover. In the latter scenario, the new controller does obtain more than 80% in the initial takeover.

4.4 Voluntary tender offers

A tender offer could be made without acquiring an initial controlling stake in a public company. Under OJK Regulation No. 54/POJK.04/2015 on Voluntary Tender Offers, a voluntary tender offer ("**VTO**") is defined as an offer made through the mass media to acquire equity securities through the purchase or exchange of other securities. Aside for acquiring shares, this VTO provision is also relevant for a "go private" process, which is discussed below.

4.5 Reporting of Share Ownership

Under the Capital Markets Law and OJK Regulation No. 4 of 2024 on Reports on Ownership of, or Any Change of Ownership of, Shares in Public Companies and Reports on the Activities of Encumbering Public Company Shares ("**Regulation 4/2024**"), the following parties must report the ownership of voting rights over shares and any changes to this ownership within five business days after the transaction date (with the transaction date counted as day one):

- Members of the board of directors and board of commissioners who directly or indirectly hold shares with voting rights;
- Parties (including an organized group[6]) that directly or indirectly hold at least 5% shares with voting rights;
- Parties (including an organized group) that directly or indirectly control a public company; and
- Parties that inherit shares with voting rights

The reporting obligation is not applicable:

- To a change of ownership of shares with voting rights that occurs as a result of corporate actions conducted by public companies (a) in the form of capital increase either with or without the granting of pre-emptive rights or (b) without any transactions undertaken by shareholders;
- To a change in the decimal places only in the percentage of ownership of shares with voting rights (e.g., it does not apply to a change of ownership percentage from 6.1% to 6.99%, but would apply to a change from 6.1% to 7%); and
- To holders of shares with no voting rights.

Regulation 4/2024 provides a template to report shareholdings to the OJK. The report must include the following information, among others:

- Name, address and nationality of the Reporting Party;
- Name of the public company;
- Number and percentage of shares with voting rights, both before and after the transaction;
- Type of transaction (e.g., inheritance or grant);
- Number of shares transacted;
- Classification of shares;
- Sale or purchase price;
- Date of transaction;
- Purpose of transaction;
- Status of ownership (i.e., direct or indirect); and

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[6] An "organized group" means parties who are planning, agreeing or deciding to cooperate to achieve certain objectives.

- Information whether the shareholder acts for the interest of Its beneficial owners, if there is an indirect share ownership.

Other than the above shareholding reporting requirement, any shareholder who encumbers 5% or more of the shares with voting rights must report that it has done so.

5. Timeline

The following is a typical indicative timeline for a takeover of a public company if an MTO is triggered.

No.	Actions	Indicative Timing
1.	Closing of the takeover – Causes change of control in the public company.	D Day
2.	Takeover announcement - The new controller (the acquirer) announces the takeover in at least one Indonesian daily newspaper with national circulation (or, if the new controller is also a public company listed on the IDX, the IDX's website) and submits to the OJK information which contains: • the number of acquired shares, price per share, the total purchase price, name of the shareholders from whom shares are being acquired, if the shares are acquired from specific shareholder(s)/off-market, and the new controller's total ownership; • the details of the new controller, including name, address, phone number, email, line of business, board compositions, capital structure and the line of business (if the new controller is a legal entity); • the purpose of the takeover (i.e., the purpose of controlling the target company); • a statement that the new controller is an Organized Group, if applicable; • the beneficial owner of the party who conducted the takeover, if such party is not the beneficial owner; • the affiliation between the controlling shareholder and the target company, if applicable; and • the details regarding the approval from the relevant authority, if applicable.	D + 1 Business Day ("**BD**") = Y
3.	Request to undertake the MTO - The new controller (the acquirer) submits cover letter, the text of the announcement of the disclosure of information about the MTO, including the necessary supporting documents, to the OJK and the target company. The text announcement should contain at least the following information: • background of the takeover	Y + 2 BD

No.	Actions	Indicative Timing

	• information on the shares, covering:
	  • description of the number and percentage of the acquired shares;
	  • the number and percentage of the target company's shares which are owned, directly or indirectly, by the new controller, including options to purchase or the right to obtain dividends or any other benefits and also the power to use the voting rights in the target company's general meetings, name of the shareholders from whom shares are being acquired (if the shares are acquired from specific shareholder(s)/off-market), the takeover price, total takeover value and date of the takeover
	• information on the new controller, covering:
	  • if the takeover is conducted by an individual, the name, address, nationality and affiliation relationship with the target company (if any)
	  • if the takeover is conducted by a party other than an individual, the establishment date, address, telephone number, email, business activity, capital structure, composition of the board of directors and board of commissioners, composition of the shareholders, beneficial owner, affiliation relationship with the target company (if any) and the explanation regarding the approval and requirements from the relevant authority (if any)
	• details of the target company covering the name, address, telephone number, email and business activity
	• the agreements or activities between the principal shareholder or the existing controller and the new controller that have material impact, if any
	• terms and conditions of the MTO, covering:
	  • the purchase price along with the explanation on how it is calculated
	  • the MTO period
	  • the payment terms
	  • the purchase mechanism
	  • the explanation regarding the approval and requirements determined by the Government which must be satisfied with respect to the MTO, if any	

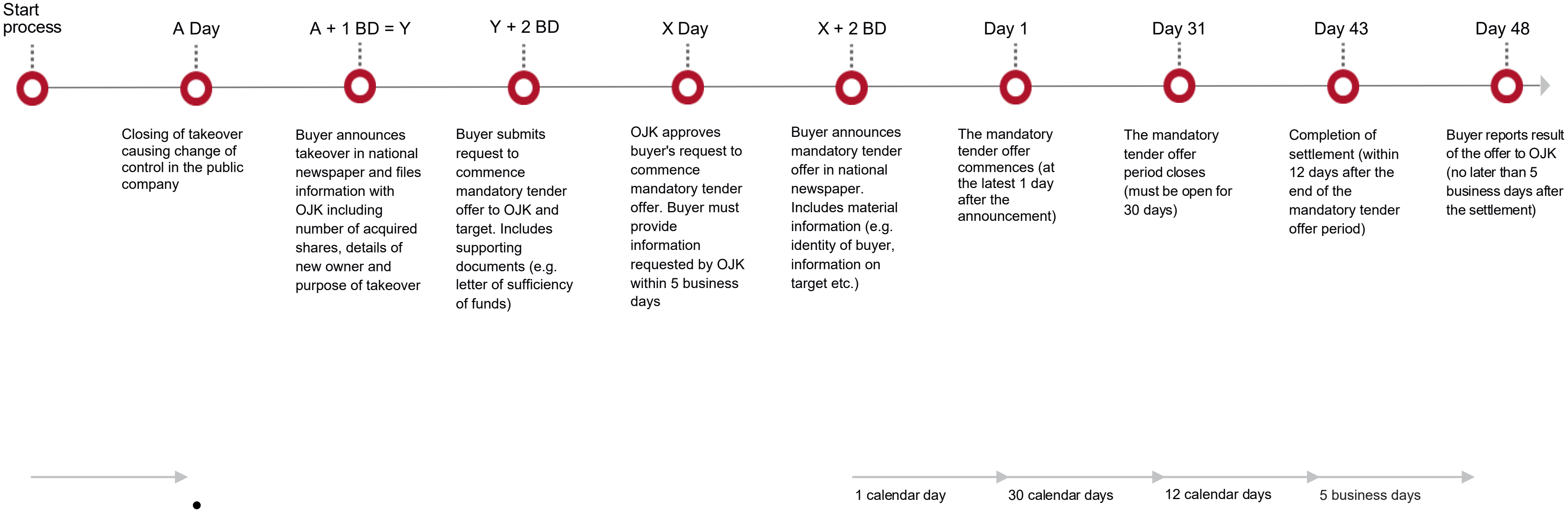
No.	Actions	Indicative Timing

	• a list of names and addresses of institutions and/or capital market supporting professions that are involved in the MTO
	• other material information:
	  • the details on the law suit regarding the takeover, if any
	  • the statement that the new controller has sufficient funds to complete the MTO and information on the source of such funds
	  • the development plan for the target company
	  • any other material information so that the disclosure of the information on the MTO is not misleading	

4.	OJK approval – The OJK approves the request of the new controller (the acquirer) to announce and commence the MTO. Note: • During the assessment by OJK, the new controller (the acquirer) must provide any documents/information requested by the OJK within five business days. • The prevailing regulations do not regulate how long the OJK has to make comments on the disclosure of information on the MTO.	X
5.	MTO announcement – The new controller (the acquirer) announces the disclosure of information on the MTO in a daily newspaper with national circulation (or if the new controller is also a public company listed on the IDX, the IDX's website). The MTO announcement must include the same information as the text announcement described in row 3 above.	X + 2 BD = A
6.	Commencement of the MTO – The MTO must start at the latest one day after the MTO announcement.	A + 1 Calendar Day ("**CD**")
7.	MTO period – The MTO must be open for a fixed period of 30 days.	A + 31 CD
8.	Settlement period – The MTO settlement must be completed within 12 days after the end of the MTO period at the latest.	A + 43 CD = S
9.	Report to the OJK – The new controller (the acquirer) reports the result of the MTO to the OJK after the settlement is completed.	S + 5 BD

Set out below is an overview of the main steps for a mandatory tender offer in Indonesia.

Mandatory tender offer (indicative timeline)



Start process	A Day	A + 1 BD = Y	Y + 2 BD	X Day	X + 2 BD	Day 1	Day 31	Day 43	Day 48
	Closing of takeover causing change of control in the public company	Buyer announces takeover in national newspaper and files information with OJK including number of acquired shares, details of new owner and purpose of takeover	Buyer submits request to commence mandatory tender offer to OJK and target. Includes supporting documents (e.g. letter of sufficiency of funds)	OJK approves buyer's request to commence mandatory tender offer. Buyer must provide information requested by OJK within 5 business days	Buyer announces mandatory tender offer in national newspaper. Includes material information (e.g. identity of buyer, information on target etc.)	The mandatory tender offer commences (at the latest 1 day after the announcement)	The mandatory tender offer period closes (must be open for 30 days)	Completion of settlement (within 12 days after the end of the mandatory tender offer period)	Buyer reports result of the offer to OJK (no later than 5 business days after the settlement)

1 calendar day

30 calendar days

12 calendar days

5 business days

6. Takeover Tactics

While takeovers through a VTO are possible, they are not common in Indonesia since Indonesian public companies generally have a controlling shareholder (who controls the majority of the shares and may not be willing to sell their shares in the VTO). The more common takeover process would be to negotiate directly with the existing controlling shareholders to acquire the controlling stake in the public company. Unless exempted, these would then be followed by an MTO for all the remaining shares (as described in 4.2 above). Regulation 9/2018 provides that an MTO is not applicable where the control is acquired due to a takeover that has been disclosed in the IPO prospectus of a public company, where the closing must be completed no later than one year after the registration statement for the IPO becomes effective. Therefore, it is possible under Regulation 9/2018 for an acquirer to avoid an MTO if the takeover is properly disclosed in the target company's IPO prospectus.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Unlike many jurisdictions, in a public company takeover in Indonesia, the acquirer does not have a right to squeeze-out or compulsorily acquire shares from minority shareholders.

8. Delisting

For a delisting or "go private" in Indonesia, OJK Rule No. 3/POJK.04/2021 on Implementation of Capital Market Activities as lastly amended by OJK Rule No. 45 of 2024 on Development and Reinforcement of Issuers and Public Companies requires the following considerations to be addressed:

- There are three types of go private, namely (i) voluntary go private, (ii) go private due to an order from OJK, and (iii) go private due to a request from IDX.
- A "go private" process must not contravene the public company's articles of association and the prevailing provisions of the Capital Markets Law. Going private can only be done following a resolution of a general meeting of shareholders at which only independent shareholders can vote, i.e. the main shareholder seeking to take the public company private cannot vote.
- The process must not harm public investors, particularly with respect to determining the price. The share purchase/buyback process must be smooth and emphasis must be placed on the public interest.
- The implementation of a go private plan (after being approved by the independent shareholders) will be done in accordance with (i) OJK Rule No. 54/POJK.04/2015 on Voluntary Tender Offers through a voluntary tender offer process ("**Voluntary Tender Offer**") or (ii) OJK Rule No. 29 of 2023 on Share Buyback of Public Company through share buyback ("**Share Buyback**").
- In general, there cannot be more than 50 shareholders after going private but the OJK may have discretion to increase this. In one precedent, the OJK agreed to increase the threshold to be not more than 300 shareholders on a discretionary basis.
- Going private also includes a delisting from the IDX, which further stipulated under IDX Decree No. Kep-00054/BEI/05-2024 on Rule I-N regarding Delisting and Relisting. In order to go private, the voluntary delisting rules of the IDX must be complied with, e.g., once the Voluntary Tender Offer or Share Buyback is implemented, the company should request the delisting of its shares from the IDX.

- The result of the general meeting of shareholders resolving to go private must be reported to the OJK and announced to the public as soon as practicable and at the latest before the commencement of the first trading session of IDX on the next working day after the general meeting of shareholders approves the "go private" process, under, among other things, OJK Regulation No. 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies (as amended).
- Please note that different requirements and mechanisms will apply for a go private that is based on an order from OJK, or request from IDX.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Iqbal Darmawan of HHP Law Firm, a member firm of Baker & McKenzie International, is the most appropriate contact in Jakarta for inquiries about public M&A in Indonesia.

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Italy

1. Overview

The Italian takeover market is well established and developed, with a strong regulatory framework built around EU legislation. The market is vibrant, with 20 takeover bids launched and completed in 2023 (out of which, 13 on voluntary basis and 7 on a mandatory basis) for a total value of EUR 1,923 million (*source*: *Commissione Nazionale per le Società e la Borsa*).

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Italian law relating to public takeover bids can be found in:

- Legislative Decree No. 58, dated 24 February 1998, as amended and supplemented from time to time (the Italian Financial Act – "**IFA**"), Sections 101-*bis* - 112; and
- Resolution of the Italian Securities and Exchange Commission (*Commissione Nazionale per le Società e la Borsa* or "**CONSOB**") No. 11971, dated 14 May 1999, implementing the IFA, as amended and supplemented from time to time ("**CONSOB Resolution No. 11971/99**"), Sections 35 -50-*quinquies*.

The main body of the Italian takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Having said this, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of securities that, upon acquisition, triggers a mandatory public takeover bid on the remaining securities of the target company and restrictions to the power of the board of directors of the target company in connection with the takeover bid). Accordingly, there are still significant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Italy, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, including, most notably:

(a) the rules relating to the disclosure of significant shareholdings in listed companies (the so-called 'transparency rules'). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information on issuers having securities admitted to trading on a regulated market, as amended and supplemented from time to time, and related EU legislation. For further information, see under 3.4 below;

(b) the rules relating to insider trading and market manipulation (the so-called 'market abuse rules'). These rules are mainly derived from Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("**Market Abuse Regulation**") as well as Directive 2014/57/ EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse ("**Market Abuse Directive II**"), each as amended and supplemented from time to time, and related EU legislation. For further information, see under 6.3 below;

(c) the rules relating to the public offer of securities and the admission to trading of securities on a regulated market. These rules would be relevant in circumstances where the consideration offered in the public takeover bid consists of securities. These rules are mainly derived from Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017, as amended and supplemented from time to time, and related EU legislation;

(d) the general rules on the supervision and control of the financial markets; and

(e) the rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

It is also worth mentioning that the Law Decree No. 91 dated 24 June 2014 ("**2014 Competitiveness Decree**"), introduced, among other things, the option for Italian listed companies to grant increased voting rights (up to two votes per share) to shares that are kept for a minimum holding period of at least 24 consecutive months ("**Increased Voting Rights Shares**"). The legal framework relating to the Increased Voting Rights Shares was subsequently amended by the Law No. 21 of 5 March 2024, which provided that the bylaws may also grant one additional increased voting right for each twelve-month period, following the first 24 consecutive months, during which shares are kept by the same holder, up to a maximum of ten additional increased voting rights per share. In the context of takeover bids, if Increased Voting Rights Shares are outstanding, then the thresholds referred in 3.1 below must be read as referring to the aggregate number of voting rights attaching to the shares held by the relevant shareholder (rather than to the mere percentage of the voting stock held). In other words, if Increased Voting Rights Shares are outstanding, the profile to be looked at for the purposes of takeover regulation is given by the actual voting powers exercisable by the shareholder and not by the mere arithmetic participation to the share capital of a listed company.

2.3 Supervision and enforcement by CONSOB

Public takeover bids are subject to the supervision and control of CONSOB, which is the securities regulator in Italy.

CONSOB has significant powers aimed at ensuring compliance with the public takeover bid rules, including the power to impose administrative fines. In case of non-compliance, criminal penalties may be imposed by the courts.

CONSOB also has the power (in certain cases) to grant exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 General principles

The following general principles apply to public takeover bids in Italy. These rules are based on the Takeover Directive:

(a) all holders of the securities of the same class of the target company must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of the target company must be given sufficient time and information to enable them to make a properly informed decision on the bid. In particular, the board of directors of the target company must issue a statement where it gives its views on the adequacy of the consideration offered and the effects of a successful completion of the takeover on (i) the interests of the target company; (ii) employment and conditions of employment at target company level; and (iii) continued operations at existing sites;

(c) a false market must not be created in the securities of the target company, the bidder or any other company interested in the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted; and

(d) the bidder can announce the bid only after ensuring that it will be able to fulfil in full its obligations to pay the relevant consideration (either in cash or in kind).

2.5 Proposed reforms

No specific reforms to the takeover regulation in Italy have been recently proposed nor are expected.

2.6 Foreign investments

In general terms, foreign investments are not subject to specific restrictions in Italy. It should be borne in mind, however, that the Italian government has "special powers", which give the Italian government the ability to veto or impose conditions on a transaction involving a change of control over companies that hold assets in the following sectors:

(a) strategic sectors: defense and homeland security, energy, transportation, and telecommunications; and

(b) additional sectors: healthcare, food security, water, banking, finance, insurance, dual-use products, IT, critical technologies, sensitive information including personal data.

The Italian government may exercise its special powers if it determines that the transaction entails a threat of a serious harm to the essential interests of the Republic of Italy for the security and operation of networks and plants and continuity of supplies in the relevant sectors or a risk to national security or public order.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding held in the voting stock of an Italian listed company:

Shareholding	Rights
One share	• The right to receive a proportional part of the net profits of the company, if any, and of the net assets of the company upon winding-up. • The right to attend and vote at shareholders' meetings. • The right to obtain a copy of the documentation submitted to share-holders' meetings. • The right to submit questions (either orally at the meeting or in writing prior to the meeting) to the directors and statutory auditors at shareholders' meetings. • The right to petition for voidance of resolutions adopted by the shareholders' meetings where (i) the meeting has not been duly called, (ii) the minutes of the meeting have not been drafted, and (iii) the content of the resolution is impossible or illegal.

Shareholding	Rights
	• The right to lodge a complaint with the statutory auditors. • The right to examine the shareholders' ledger and the book of the minutes of shareholders' meetings.
0.1%	• The right to challenge a shareholders' meeting resolution which does not comply with the law or with the articles of association of the company, provided that – at the concerned meeting – the shareholders owning at least 0.1% of the voting stock were absent or expressed a negative vote or abstained, unless the articles of association set forth a lower percentage or exclude altogether the applicability of any percentage requirement for the purpose of said challenge. • The right to challenge a shareholders' meeting resolution approving the financial statements on the grounds that said financial statements fail to comply with the provisions governing the preparation thereof, in presence of a negative opinion, a disclaimer or a qualified opinion expressing significant doubts on the business continuity of the financial statements, issued by the independent auditors.
2%	The right to lodge a complaint concerning the company's management with the statutory auditors. In such case, the statutory auditors must promptly investigate the matter and report to the shareholders' meeting or, in case of serious mismanagement, promptly call the shareholders' meeting for urgent actions (unless the articles of association set forth a lower percentage).
2.5%	• The right to request that the agenda of the shareholders' meeting be supplemented and to submit proposals for resolution in relation to items already included in the agenda of the shareholders' meeting. • The right to sue the directors and/or the statutory auditors for damages caused to the company (unless the articles of association set forth a lower percentage). • The right to submit a list of potentials for the appointment of the directors and the statutory auditors (unless the articles of association set forth a lower percentage).
5%	• The right to request that (i) the board of directors, or (ii) in case of nonfulfillment by the board, the statutory auditors, or (iii) in case of non- fulfilment by the statutory auditors, the court (petitioned ad hoc), promptly call a shareholders' meeting (unless the articles of association set forth a lower percentage). • The right to petition the court to take immediate action against directors if there is well grounded suspicion of serious mismanagement which may harm the company or one or more

Shareholding	Rights
	of its subsidiaries (unless the articles of association set forth a lower percentage). - The right to oppose to the shareholders' meeting resolution aimed at (i) releasing directors and/ the statutory auditors from their liabilities vis-à-vis the company, or (ii) settling a claim of the company against the directors and/or statutory auditors, where a proceeding has been initiated by the shareholders on behalf of the company or by the company itself against the directors and/or the statutory auditors (unless the articles of association set forth a lower percentage). - The right to challenge the resolution of a shareholders' meeting approving the financial statements on the grounds that said financial statements fail to comply with the provisions governing the preparation thereof, in presence of a positive opinion on said financial statements issued by the independent auditors
20%	The right to pass a resolution to sue directors and/or statutory auditors for damages caused to the company automatically causing the removal of the relevant directors and/or statutory auditors from their offices.
33.33% (i.e., one-third of the corporate capital)	The right to claim to be not sufficiently informed about the items on the agenda and, accordingly, the right to request that the meeting be adjourned with respect to such items for up to five days.
More than 50%	The right to approve resolutions concerning the following matters in the ordinary shareholders' meeting: - approval of the financial statements; - appointment and removal of directors and determination of their remuneration; - appointment and removal of statutory auditors and determination of their remuneration; - appointment and removal of the external auditors; - resolution on the liability of the directors and statutory auditors; and - any other matter attributed by law to the competence of the ordinary shareholders' meeting.
At least 66.6%	The right to approve resolutions concerning the following matters in the extraordinary shareholders' meeting: - amendments to the articles of association; - appointment and replacement of the liquidators and determination of powers granted to them; and

Shareholding	Rights
	• any other matter attributed by law to the competence of the extraordinary shareholders' meeting.
95%	The squeeze-out right (as defined under 7 below).

3.2 Restrictions and careful planning

Italian law contains a number of rules that apply before a public takeover bid is announced. These rules impose restrictions in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions are summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start a process aimed at launching a public takeover bid.

3.3 Insider trading and market abuse

The basic legal framework regarding insider trading and market abuse under Italian law is set forth in the Market Abuse Regulation and in the IFA and related regulation implementing such legislation.

With the above in mind, in principle, the rules on insider trading and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in the securities of the target company. It should also be noted that the rules on insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid, unless the bidder (or the target company) publicly discloses such inside information and also includes this in the offering document (*Documento di Offerta*) concerning the bid.

With regard to the concept of "*inside information*" and for the purposes of the applicable disclosure obligations, the Market Abuse Regulation provides for a definition thereof, whereby:

- "*inside information*" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

- information shall be deemed to be of a "*precise nature*" if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument; and

- "*information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments*" shall mean information a reasonable investor would be likely to use as part of the basis of their investment decisions.

Usually, it is up to the management of a listed company to determine whether or not certain information qualifies as "inside information", which in certain circumstances, may prove to be a difficult exercise.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid. Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to publicly disclose its stake when the voting rights attaching to its stake pass the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6% and 90%.

For Italian listed companies qualifying as small or medium-sized enterprises ("**SMEs**"), the first relevant threshold to be considered for disclosure purposes is set at 5%. A listed company qualifies as an SME when it shows a market capitalization lower than EUR 1 billion.

Furthermore, in case of the acquisition of a stake exceeding the thresholds of 10%, 20% and 25%, the party responsible for the communication must disclose the business objectives it intends to pursue during the six months following the acquisition of the relevant stake.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held through nominees, fiduciaries or subsidiaries, respectively.

3.5 Disclosures by the target company

During a public takeover bid, the target company must continue to comply with the general rules regarding disclosure and transparency, which include the obligation of the company to immediately disclose to the public any inside information relating to itself, its securities and/or its subsidiaries, if any. The facts surrounding the preparation of a public takeover bid may constitute inside information and as such, be subject to disclosure. However, the board of the target company may delay the disclosure if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. However, a delay of the announcement is only permitted provided that (i) an immediate disclosure is likely to prejudice the legitimate interests of the target company, (ii) the delay of disclosure is not likely to mislead the public, and (iii) the target company is able to ensure the confidentiality of that information.

It is worth mentioning that Regulation (EU) 2024/2809 of 23 October 2024 has further clarified the scope of the requirement mentioned under point (ii) above, by providing that, starting from June 2026, a delay of the announcement is only permitted provided that the inside information that the issuer intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer on the same matter to which the inside information refers.

3.6 Announcements of a public takeover bid

The decision of a bidder to launch a voluntary public takeover bid (or the obligation of a bidder to launch a mandatory public takeover) must be notified without delay to CONSOB by way of submission of a notice ("**Initial Notice**"). At the same time, the Initial Notice must be disclosed to the target company and the public. No later than 20 days from the date of the Initial Notice, the bidder must file with CONSOB an offering document (*Documento di Offerta*) for CONSOB's approval and subsequent publication. Should said deadline not be met, the offering document (*Documento di Offerta*) is declared inadmissible by CONSOB and the bidder may not make a further bid on the same securities of the target company for the following 12 months.

3.7 Early disclosures – Put-up or shut-up

No put-up or shut-up rule applies in Italy. Nevertheless, if there are rumors or leaks that a (potential) bidder intends (or may be required) to launch a public takeover bid – even though such (potential) bidder has not yet publicly disclosed such intention (or requirement) – and the trading performance of the securities involved is affected, CONSOB may request such (potential) bidder to disclose information and documents in order to inform the general public.

3.8 Due diligence

Italian public takeover bid rules do not contain any specific rules regarding the conduct of pre-bid due diligence on the target company. In general terms, such due diligence is accepted in the market and also by CONSOB, although appropriate mechanisms must be put in place to avoid potential market abuse and early disclosure implications. These include the use of strict confidentiality procedures and data rooms.

3.9 Acting in concert

For the purpose of the Italian takeover bid rules, the definition of persons acting "*in concert*" is set forth in the applicable provisions of the IFA, which:

(a) provides a general definition of persons acting "*in concert*" as including persons who co-operate on the basis of an agreement in order to (i) obtain, maintain or strengthen the control over a target company, or (ii) hinder the success of a takeover bid launched with respect to a target company. This is regardless of whether such agreement is express or tacit, oral or formalized in a written form, valid and binding or invalid and with no effect;

(b) provides for a set of non-rebuttable presumptions, whereby persons meeting certain factual requirements and/or carrying out certain conduct are conclusively deemed to be acting in concert. Such persons are:

  (i) the parties to an agreement, even if void, which:

    (A) concerns the exercise of voting rights in companies with securities listed on a regulated market or in their parent companies;

    (B) imposes consultation obligations prior to exercising voting rights in companies with securities listed on a regulated market or in their parent companies;

    (C) restricts the transfer of securities (or of financial instruments that entitle their holders to buy or subscribe for the same securities) in companies with securities listed on a regulated market or in their parent companies;

    (D) provides for the purchase of securities (or of financial instruments that entitle their holders to buy or subscribe for the same securities) in companies with securities listed on a regulated market or in their parent companies; and

    (E) has, as its purpose or effect, the exercise of a dominant influence (as defined in Section 2359 of the Italian Civil Code) on companies with securities listed on a regulated market or on their parent companies.

  (ii) an entity, its parent company and its subsidiaries;

  (iii) companies subject to joint control; and

  (iv) a company and its directors or general managers.

(c) delegates to CONSOB the authority to identify certain factual circumstances whereby persons are presumed to be acting in concert, unless they are able to provide evidence to the contrary. More specifically, according to CONSOB Resolution No. 11971/99:

(i) a party, their spouse, cohabiting partner, persons related by consanguinity or affinity, and direct relatives and relatives up to the second degree, and children of their spouse or cohabiting partner; and/or

(ii) a party and their financial advisers for transactions relating to the issuer, where said advisers (or companies belonging to their group) have purchased securities of the issuer outside the scope of their trading activity (as ordinarily carried out and at arm's length) on their own behalf, after their appointment or during the month prior to such appointment,

are presumed to be acting in concert unless they can prove the contrary.

The concept of persons acting in concert is very broad, and in practice issues may arise in determining whether or not persons actually act in concert. This is especially relevant in relation to mandatory takeover bids. If the conditions and/or presumptions referred to above are satisfied and one or more persons in a group of persons acting in concert acquire voting securities, as a result of which the aforesaid group in the aggregate would pass the relevant triggering threshold, all members of the group will be jointly and severally liable to launch a mandatory takeover bid, even though the single member does not individually pass the relevant triggering threshold.

4. Effecting a Takeover

4.1 Types of takeover bids

There are two main forms of takeover bids in Italy:

(a) a voluntary takeover bid, in which a bidder voluntarily makes an offer for all or part of the outstanding voting securities issued by the target company; and

(b) a mandatory takeover bid, in which an investor is required to make an offer for the purchase of all outstanding voting securities of a listed target company if:

- as a result of an acquisition of voting securities of a listed company, such investor crosses – alone or acting in concert with others – a threshold of 30% of the voting securities of such company ("**30% Threshold**"), which threshold is reduced to 25% if such company does not qualify as an SME and no other person owns a greater participation ("**25% Reduced Threshold**"). The articles of association of a listed company that qualifies as an SME may vary the aforesaid 30% threshold to a different percentage ranging from 25% to 40% of the voting securities ("**SME Threshold**");
- the investor, who already holds (A) more than the 30% Threshold of a listed company or, in case the listed company qualifies as an SME company, the applicable SME Threshold, but (B), in all cases, less than 50% of the voting securities of such listed company, directly or indirectly acquires more than 5% of the outstanding voting securities of such listed company over any 12 month period;
- the investor crosses the 30% Threshold (or the 25% Reduced Threshold or the applicable SME Takeover Threshold, as the case may be) by acquiring voting securities of another company (whether listed or not), the main assets of which consist of the voting securities held in the listed target company.

With regard to the obligation to launch a mandatory takeover bid for any violation of the restrictions to acquire voting securities in the target company after the takeover bid period, see under 7.4 below.

Generally speaking, in the context of a mandatory takeover bid:

- the bidder must address its offer without distinction to all the holders of voting securities;
- the consideration is determined according to criteria set forth in the law; and
- the bid is unconditional.

On the contrary, in the context of a voluntary takeover bid:

- the bidder is free to make the takeover bid;
- the bidder is in principle free to determine, among other things, the quantity of the voting securities it intends to purchase and the consideration it intends to pay; and
- the bidder may subject the offer to certain conditions precedent.

While voluntary and mandatory takeover bids share some common features, they also present some differences.

In particular, with regard to the similarities, in both scenarios:

- the offer, once launched, is irrevocable;
- the bidder must offer the same consideration to all the holders of voting securities of the same class;
- prior to launching the offer, the bidder must ensure that it can fulfil the obligation to pay the overall consideration assuming full acceptance of the offer;
- the bidder must immediately submit the Initial Notice to CONSOB (concerning the decision to launch a voluntary takeover bid or the obligation to launch a mandatory takeover bid). At the same time, the bidder must publicly disclose such decision or obligation;
- the bidder must file an offering document (*Documento di Offerta*) concerning the bid with CONSOB for the latter's approval within 20 days following the date of the Initial Notice referred to above;
- the board of directors of the target company must issue a statement where it gives its views on the adequacy of the consideration offered and the effects of a successful completion of the takeover on (i) the interests of the target company; (ii) employment and conditions of employment at target company level; and (iii) continued operations at existing sites;
- transparency and fair conduct rules, as set forth by CONSOB Resolution No. 11971/99, apply from the Initial Notice to CONSOB until the date set for payment of the consideration;
- the "best price rule" applies, i.e., if during the period between the Initial Notice and the date of payment of the consideration offered by the bidder of a takeover bid, the bidder or any persons acting in concert with it acquire, directly or indirectly, outside of the bid voting securities that are the subject of the bid at a price higher than the offered price, the offered price must be revised to reflect such higher price; and
- following either a voluntary takeover bid or a mandatory takeover bid for the entire share capital of an Italian listed company:

- if the bidder ends up holding more than 90% of the voting securities of the target company, the so-called "*sell- out right*" arise in favor of the remaining shareholders of the target company (see under 7 below);
- if the bidder ends up holding at least 95% of the voting securities of the target company, the so-called "*sell- out right*" and the so-called "*squeeze-out right*" arise in favor of the remaining shareholders of the target company and the bidder, respectively (see under 7 below).

4.2 Differences between voluntary and mandatory takeover bids

The main differences between a voluntary and a mandatory takeover bid are summarized in the following table:

	Mandatory takeover bids	Voluntary takeover bids
Consideration	The minimum price must not be lower than the highest price paid by the bidder (and any person acting in concert) for voting securities of the target company in the 12 month period prior to the Initial Notice. If no purchases of voting securities of the target company were made in the aforesaid 12 month period, the price must not be lower than the weighted average trading price for the voting securities of the target company during the 12 months prior to the Initial Notice. Exceptions to the foregoing are regulated by CONSOB.	Determined by the bidder, except when the best price rule applies.
Conditions precedent	The offer is unconditional	The offer may be subject to certain conditions (such as a minimum acceptance level, MAC clauses relating to the target, war clause, financial covenants, non-insolvency clauses, etc.), but may not be subject to conditions whose occurrence is solely within the bidder's discretion.
Acceptance period	Between 15 and 25 trading days (but may be reopened)	Between 15 and 40 trading days (but may be reopened).
Pro rata rule	N/A	If only a specified number of voting securities are to be purchased, the bid should provide that tenders will be accepted on a pro rata basis if the number of voting securities

	Mandatory takeover bids	Voluntary takeover bids
		tendered exceeds the number of voting securities to be purchased.
Amendments to the bid	N/A	Only those amendments which result in better terms and conditions of the bid, i.e., a greater consideration offered, are permissible. Reductions in the quantity of voting securities to be purchased are not permitted.
Competing bids	N/A	Permissible up to five trading days before the end of the acceptance period of the prior takeover bid.

Exemptions	The main exemptions to the obligation to launch a mandatory takeover bid apply in the following cases:
	• an investor comes to hold more than 30% of the voting securities as a result of a takeover bid addressed to all the shareholders;
	• another shareholder or other shareholders jointly hold more than 50% of the voting rights of the target;
	• the 30% Threshold (or the 25% Reduced Threshold, where applicable) is exceeded:
	  • in connection with a recapitalization of the target company (or other intervention aimed at strengthening the target company's equity) and the target company is in a documented financial distress;
	  • by intragroup transfers;
	  • by exercising pre-existing subscription, conversion or pre-emption rights;
	  • and the investor undertakes to transfer voting securities to unrelated parties or to reduce the voting rights in excess within
		N/A

	Mandatory takeover bids	Voluntary takeover bids

	12 months and not to exercise the voting rights attaching to the excess securities;
	• as a consequence of the purchase of derivative financial instruments, the investor undertakes to transfer derivative instruments or voting securities to unrelated parties in excess within 6 months and not to exercise the voting rights attaching to the excess securities;
	• as a consequence of mergers or spin- offs approved by the shareholders' meeting without the contrary vote of the majority of the attending shareholders, different from, among other things, the shareholder or shareholders which jointly or individually hold an absolute or relative majority shareholding that is over 10% (the so called 'whitewash mechanism');
	• as a result of inheritance or donations; and
	• as a result of a voluntary takeover bid for at least 60% of the voting securities of the target company (the so-called "**Pre-emptive Bid**"), provided that:
	  • the bidder (or persons acting in concert with it) has not purchased more than 1% of the voting securities of the target company in the 12 months prior to or during the Pre-emptive Bid;
	  • the effectiveness of the Pre-emptive Bid has been made subject to the condition precedent of an approval of shareholders of the target holding a majority of the relevant securities	

	Mandatory takeover bids	Voluntary takeover bids
	(excluding the shareholding held by the bidder, (ii) the (absolute or relative) majority shareholder where its shareholding exceeds 10%, and (iii) by persons acting in concert with the bidder) (the so-called 'whitewash mechanism'); and • CONSOB grants the exemption after verifying satisfaction of the conditions above.	
Consequences of a failure to launch the bid	• Statutory suspension of the voting rights attached to the all securities held by the bidder (and any persons acting in concert with it) in the target company; • the voting securities exceeding the relevant thresholds must be disposed of within 12 months or, alternatively, CONSOB may request the bidder to launch a mandatory takeover bid and set the price thereof; and • administrative fines comprised between EUR 25,000 and the total amount payable by the bidder or which would have been payable by the bidder had the takeover bid actually been implemented.	N/A

5. Timeline

As a general rule, the takeover bid process for a voluntary public takeover bid is similar to the process that applies to a mandatory public takeover bid, with certain exceptions. Such process – from the initial stage of the offer until the end of the acceptance period – will usually require at least 3 months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.

The table below contains an overview of the main steps of a typical voluntary public takeover bid process under Italian law.

Step		Timing
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing, and drafting of offering document (*Documento di Offerta*). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders	T0 - x days
2.	Disclosure of the decision to launch a bid: • Initial Notice to CONSOB. • The bidder must publicly disclose the decision to launch a voluntary takeover bid. • The boards of the target and the bidder must inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.	T0
3.	Launching of the bid: • Filing of the offering document (*Documento di Offerta*) with CONSOB. Should deadline not be met, the takeover bid document shall be declared inadmissible and the bidder may not make a further bid on the same financial products of the target company in the 12 months thereafter.	T0 + 20 days
4.	CONSOB approval of the offering document (*Documento di Offerta*): • CONSOB issues its approval of the offering document (*Documento di Offerta*) within 15 days of the filing of the offering document if it believes that such document allows the addressees of the bid to form an informed opinion on the bid. Should CONSOB request additional information from the bidder, the time limit to issue its approval is suspended until such information is received. • The bidder must provide CONSOB with the requested additional information by the deadline set forth by CONSOB, in any event not exceeding 15 days from the request. • If sector-specific regulations require authorizations from other authorities for launching the bid, CONSOB issues its approval of the offering document (*Documento di Offerta*) within 5 days from the communication of such authorizations.	T0 + 35 days
5.	The bidder must send CONSOB proof of cash confirmation i.e., that sufficient funding is in place for the bidder to fully satisfy its payment obligations in relation to the offered price.	T1 – 1 trading day

Step	Timing
6. Publication of the offering document (*Documento di Offerta*) after approval of CONSOB: • The final approved offering document (*Documento di Offerta*) must be submitted to CONSOB and the target company, physically and in electronic format. • The boards of the target and the bidder must inform the representatives of their respective employees or, where there are no such representatives, the employees themselves. • In certain circumstances where there is a close connection between the bidder (or any persons acting in concert with it) and the target company (*e.g.*, if the bidder is a director of the target company), the statement on the bid by the target board is generally annexed to the offering document (*Documento di Offerta*).	T1
7. Statement on the bid by the target board: • The board of directors of the target company must issue a statement in which it gives its views on the adequacy of the consideration offered and the effects of a successful completion of the takeover on: (i) the interests of the target company; (ii) employment and conditions of employment at target company level, and (iii) continued operations at existing sites. Once issued, such statement shall be communicated to the representatives of the company's employees or, where there are no such representatives, directly to the employees.	T1 + 4 trading days (unless the statement on the bid by the target board is already annexed to the offering document (*Documento di Offerta*))
8. Commencement of the acceptance period: • Duration: between 15 and 40 trading days for a voluntary takeover bid. • The term of the acceptance period is agreed upon with Borsa Italiana S.p.A. (the Italian market operator that organizes, operates and manages the Italian stock exchange). • For the purposes of correctly implementing the bid and investor protection, after consulting with the bidder and Borsa Italiana S.p.A., CONSOB may extend the term of the acceptance period, more than once, up to a maximum of 55 trading days. • In the event that a shareholders' meeting is called for the purposes of obtaining the shareholders' authorization for the adoption of anti-takeover defense mechanisms (see under 6.4 below), such meetings shall be held in the last 10 trading days of the acceptance period. In such a case, the acceptance period will be extended so that it will expire after 10 trading days following the shareholders' meeting.	T1 + 5 trading days (if the statement on the bid by the target board is already annexed to the offering document (*Documento di Offerta*), the acceptance period can commence on T1)

Step	Timing
• Amendments to the bid may occur until the trading day before the end of the acceptance period. In such a case, the acceptance period will be extended for at least trading three days following the disclosure of the relevant amendment to the prior bid.	
9. Closure of the acceptance period: • If "insider bids" are launched by: (i) shareholders of the target company owning voting securities in excess of the 30% Threshold (or the 25% Reduced Threshold, where applicable); (ii) parties to a shareholder agreement owning in aggregate voting securities in excess of the 30% Threshold (or the 25% Reduced Threshold, where applicable); (iii) directors of the target company; or (iv) persons acting in concert with the parties listed under points (i), (ii) and (iii) above, within the trading day following the payment date, the acceptance period can be re-opened for five trading days, upon the occurrence of certain circumstances.	T1 + 45 trading days
10. Publication of the final results	T1 + 49 trading days
11. Payment of the consideration offered by the bidder: • If the bidder, in the context of a voluntary or a mandatory takeover bid for the entire share capital of an Italian listed company, acquired more than 90% of the voting securities of the target company, a period of time between 15 and 25 trading days (to be agreed upon with Borsa Italiana S.p.A.) will start for the exercise of the sell-out rights (see under 7 below).	T1 + 50 trading days

Set out below is an overview of the main steps for a voluntary public takeover bid in Italy.

Voluntary public takeover bid (indicative timeline – calendar days)

Start process

Day 0

Disclosure of decision to launch bid:

- notify Italian SEC (CONSOB)
- publicly disclose decision
- inform employee reps/employees

Day 20

Launch of bid by filing offer document with CONSOB

If late, offer document is declared inadmissible and bidder may not bid (on the same target products) for 12 months

If CONSOB requires additional information, time limit for approval is suspended. Bidder must provide information by deadline set by CONSOB (must not exceed 15 days)

Day 35

CONSOB approves the offer document.

Approved offer document must be submitted to CONSOB and target. Target and bidder must inform employee reps/employees

Bidder submits to CONSOB proof of sufficient funding to satisfy its payment obligations under the bid

Day 36 (T1)

Bidder publishes offer document (along with target's statement on adequacy of offer and effects on target interests, employment and operations)

T1+4 Days

Start of acceptance period (assuming offer period begins on Monday of the week immediately following the date of publication of the offer document).

Acceptance period may be extended:

- by CONSOB (up to 55 trading days)
- if a shareholders' meeting is called (acceptance period will expire after 10 trading days)
- if bid is amended (for at least 3 trading days)

T1+67 Days

End of acceptance period (assuming an offer period of 40 trading days and no reopening of terms)

T1+73 Days

Publication of results

T1+74 Days

Payment of consideration

6. Takeover Tactics

6.1 Inside information

An Italian company is obligated to immediately disclose to the public all "*inside information*" that relates to it, including all material changes in information that has already been disclosed to the public (see under 3.3 above).

6.2 In the event of a public takeover bid

Pending a voluntary takeover bid, any other bidder (including a so-called 'white knight') may launch a competing bid – up to five trading days before the end of the acceptance period of the prior takeover bid – provided that it gives immediate notice to CONSOB of the decision to launch said bid and publicly discloses such decision, as well as files the offering document (*Documento di Offerta*) concerning the bid, with CONSOB no later than 20 days from the prior notice (see under 3.6 above).

6.3 Insider trading and market abuse

In principle, the rules on insider trading and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities (see under 3.3 above).

6.4 Common anti-takeover defense mechanisms

Anti-takeover defense mechanisms in Italy are subject to the applicability of three main rules:

(a) Passivity rule (or board neutrality rule)

The board of directors of the target company must abstain from adopting any action or having the company involved in any transaction that may adversely affect the achievement of the goals of a pending takeover bid, unless such action and/or transaction has been approved by the ordinary or extraordinary shareholders' meeting respectively (depending on their respective areas of attributed decision-making powers). However, the articles of association of the target company may allow the board of directors to derogate, wholly or in part, from the passivity or board neutrality rule (opt-out system).

The passivity (or board neutrality rule) applies from the date of the Initial Notice until the end of the bid or until the bid expires. The mere search for other bids ('white knights') is not subject to such rule.

The following table summarizes the main anti-takeover defense mechanisms that, if adopted or engaged in pending a bid, must be authorized by the shareholders of the target company, unless the articles of association state otherwise:

Purpose of the defense	Mechanism
(a) To increase the overall consideration to be offered by the bidder	• Capital increases. • Share buybacks. • Conversion of non-voting securities into voting securities.
(b) To significantly vary the business	• Mergers, demergers, split-ups, spin-offs, reorganizations.

Purpose of the defense	Mechanism
characteristics of the target company	• Sale of core assets (crown jewels). • Purchase of non-core assets. • Increase in indebtedness. • Joint-ventures or acquisitions of other companies that trigger antitrust approvals.
(c) To prevent the successful conclusion of the bid	• Launch of a takeover bid for the securities of the bidder. • Lawsuits against the bidder. • Hostile advertising campaigns against the bidder.

(b) The breakthrough rule

The articles of association of the target company may set forth the following provisions (opt-in system):

(i) any limitations on the transfer of securities envisaged in the articles of association shall have no effect on the bidder;

(ii) any limitations on voting rights envisaged in the articles of association or shareholders' agreements in cases where a shareholders' meeting is called to authorize the actions or transactions referred to above under the passivity or board neutrality rule, shall have no effect on the bidder; and

(iii) any limitations on voting rights envisaged in the articles of association or shareholders' agreements or any special rights in relation to the appointment or removal of the directors or members of the management body or supervisory board envisaged in the articles of association shall have no effect at the first shareholders' meeting of the target company following the end of the bid, called to amend the articles of association or to remove or appoint the directors, if as a result of the takeover bid the bidder comes into possession of at least 75% of the voting securities of the target company.

The breakthrough rule applies for the entire duration of the acceptance period. As a result of the foregoing, other common anti-takeover defense mechanisms (such as clauses in the articles of associations aimed at hampering the renewal of the board by the bidder – including those providing for (i) a staggered board, (ii) supermajorities in case of appointment or removal of directors, (iii) rights of appointment and removal of directors specifically granted to holders of particular categories of securities – or clauses in shareholders' agreements aimed at restricting the right to vote or the freedom to transfer the securities) are ineffective in the context of a takeover bid if the articles of association of the target company so provide.

(c) The reciprocity rule

The passivity (or board neutrality) rule and the breakthrough rule shall not apply to takeover bids launched by entities not subject to such rules or equivalent rules, or by a company or entity controlled by such entities. In other words, should the bidder not be subject to the passivity or board neutrality rule and/or the breakthrough rule (by operation of law or due to specific provisions of its articles of association), any anti-takeover defense mechanism may be adopted by the board of directors of the target company. However, under Italian law, the authority to adopt any such defensive measures by the board of directors of the target company must be expressly granted by the shareholders' meeting at least 18 months prior to the date of the Initial Notice.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

The right of the bidder to squeeze-out, i.e., to force all the holders of the outstanding voting securities to transfer such securities to it, arises if:

- following a takeover bid (either voluntary or mandatory) over the entire voting stock of the target company ("**Global Takeover Bid**"), the bidder (alone or in concert with others) comes to hold at least 95% of the voting securities of the target company; and
- the bidder has stated in the offering document (*Documento di Offerta*) the intention to avail itself of such right.

The right to squeeze-out must be exercised within three months following the expiry of the acceptance period of the bid, by paying the same consideration offered in the prior takeover bid. The transfer becomes effective when notice of the deposit of the consideration with a bank is given to the target company, which must then make the relevant entries in the shareholders' ledger.

7.2 Sell-out

The right of the minority shareholders to sell-out, i.e., to demand the bidder to acquire their voting securities, arises if:

- following a Global Takeover Bid, the bidder (alone or in concert with others) comes to hold at least 95% of the voting securities of a listed company; or
- any investor comes to hold more than 90% of the voting securities of a listed company and the same investor does not restore the minimum free float of the same voting securities required to ensure their regular trading within a term of three months following the date on which the 90% threshold has been crossed.

If any of the thresholds indicated above are reached solely as a result of a Global Takeover Bid and, in the case of a voluntary Global Takeover Bid, the bidder has purchased in such bid at least 90% of the voting securities targeted by the bid, the price paid to such sell-out minority shareholders must be equal to the price offered in the relevant takeover bid and take the same form as that of the takeover bid except that the holder of the voting securities may request full payment in cash.

If the 90% threshold is not reached solely as a result of a Global Takeover Bid or, in the case of a voluntary Global Takeover Bid, the bidder has purchased in such bid less than 90% of the voting securities targeted by the bid, the price is determined by CONSOB, which will also take into account any previous bid price or the market price in the six month period prior to (i) the Initial Notice, or (ii) the acquisition that caused the relevant threshold to be crossed.

If the price is equal to the offer price of a prior takeover bid, the commitment of the bidder to acquire the voting securities of the holders exercising their sell-out right may be effected by means of reopening of the terms of the takeover bid. Conversely, where the price is determined by CONSOB, the bidder must send CONSOB details for the determination of the price together with a statement by the target's independent auditors concerning the fairness of such details.

7.3 Squeeze-out followed by a merger

In the event a bid is intended to represent only the first step of a corporate reorganization process that will be followed by a merger, the bidder must disclose – in the Initial Notice and in the offering document (*Documento di Offerta*) – such intention to carry out a merger following the conclusion of the bid. In doing this, the security holders of the target company can make a more informed decision as to whether to accept the offer and tender their securities

7.4 Restrictions on acquiring securities after the takeover bid period

If in the six-month period following the date of payment of the consideration offered by the bidder, the bidder or any persons acting in concert with it acquire, directly or indirectly, an aggregate number of voting securities that were the subject of the bid higher than 0.1% at a price higher than the offered price, the offered price must be revised to reflect such higher price.

During a term of 12 months following the end of a Pre-emptive Bid, where the bidder and the persons acting in concert with the bidder have acquired 25% or more of the voting securities of the target company (or more than 30% if the target is a SME), the bidder and the persons acting in concert with the bidder may not acquire, directly or indirectly, more than 1% of the voting securities to which the Pre-emptive Bid applied (including acquisitions made through forward contracts expiring at a date later than 1 year). If such prohibition is violated, i.e., more than 1% of the voting securities are purchased in the 12 months following completion of the Pre-emptive Bid, the bidder will be obliged to launch a mandatory takeover bid for the outstanding voting securities of the target. The bidder will also be obliged to launch a mandatory takeover bid over the outstanding voting securities of the target in the event that the target company approves a merger or a spin- off in the 12 months following the end of an Pre-emptive Bid.

8. Delisting

As a general rule, CONSOB may not oppose the delisting of an Italian company that is listed on an Italian financial market organized, managed and operated by Borsa Italiana S.p.A., provided that sufficient protection has been given to the investors in and the security holders of the company that is going private. Traditional schemes through which a company may go private and be delisted include: Global Takeover Bids without restoration of the minimum free float; mergers or spin-offs of a listed company in a non- listed company; conversions of listed securities in non-listed securities; and buybacks that reduce the free float below the minimum level. Shareholders who do not agree to the delisting may exercise their withdrawal rights.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Pietro Bernasconi, Raffaele Giarda and Ludovico Rusconi are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Italy.

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Japan

1. Overview

In recent years, the Japanese M&A market has continued to see a steady flow of public M&A transactions by way of tender offers. A tender offer is a public offer to acquire securities in a listed company from its shareholders. Most of the tender offers in Japan are conducted with the support of the target's board of directors and hostile offers are relatively uncommon in Japan. Having said that, since 2019, we have seen a rise in the number of hostile offers. This recent trend may be partly attributable to (i) the recent reform of the Corporate Governance Code (see 2.5 below), which has placed more pressure on listed companies to maximize value for shareholders, and (ii) a change in the perception of Japanese people against hostile offers, which were considered culturally taboo in the past.

Acquisition of Japanese listed companies by foreign strategic and financial investors is not uncommon. The rules for tender offers in Japan are well established but include very detailed and complicated regulations. The bidder is strongly recommended to consult local legal counsel when planning for an acquisition of a Japanese listed company.

2. General Legal Framework

2.1 Main legal framework

The main rules of Japanese law relating to public tender offers can be found in the Financial Instruments and Exchange Act (Act No. 25 of 13 April 1948, the "**FIEA**"). The FIEA underwent major reform in 2006, introducing, among other things, stricter thresholds for mandatory offers, enhanced disclosure and an offeror's obligation to accept all offers tendered under certain conditions. The Japanese tender offer rules under the FIEA (the "**Tender Offer Rules**") were first introduced in 1971 and were modelled on the US tender offer rules. The current Tender Offer Rules still have some similarity to its equivalent under the US Securities Exchange Act of 1934.

The FIEA is supplemented by the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 30 September 1965, the "**Order**"), and the Cabinet Office Ordinance for Disclosure Required for Tender Offer for Share Certificates, etc. by Person Other than Issuer (Ordinance of the Ministry of Finance No. 38 of 26 November 1990, the "**Tender Offer Ordinance**"), which set forth detailed requirements for the implementation of tender offers.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public tender offers in Japan, there are a number of additional rules and principles that are to be taken into account when preparing for or conducting a public tender offer, such as:

(a) The rules regarding rights of shareholders and the duties of the board of directors of the target under the Companies Act (Act No. 86 of 26 July 2005, the "**Companies Act**"). The shareholder's right to demand disclosure of the target's shareholder registry is important in both friendly and hostile tender offers. The general framework regarding the duties of the target's board of directors applies when the target's board expresses its opinion regarding the bidder's tender offer.

(b) The disclosure and delisting rules in the listing rules of the stock exchange on which the target stock is listed. Please see 3.4 and 6.1 for the disclosure requirements and see 8 for the delisting of the target's stock.

(c) The insider trading, market manipulation and other unfair trade regulations under the FIEA. Please see 3.5, 6.1, 6.2 and 6.3 below.

(d) The laws and regulations regarding foreign investment restrictions. Please see 2.4 below.

(e) The laws and regulations regarding merger control in Japan and overseas jurisdictions. These rules are not discussed herein.

(f) The laws and regulations regarding securities transactions in foreign jurisdictions, such as the US securities regulations. These may especially be relevant when the target has a substantial number of foreign investors among its shareholders. Appropriate solutions have been developed in practice to deal with specific situations in this aspect. These are not further discussed herein.

2.3 Supervision and enforcement by the Financial Services Agency

Public tender offers are subject to the supervision and control of the Commissioner of the Financial Services Agency. The Financial Services Agency is the principal securities regulator in Japan. In practice, the Director-General of the Kanto Local Financial Bureau is delegated with certain supervisory powers relating to public tender offers. The Securities and Exchange Surveillance Commission is in charge of monitoring securities markets.

The Commissioner has a number of legal tools that it can use to supervise and enforce compliance with the Tender Offer Rules, including administrative fines and administrative monetary penalties. In addition, criminal penalties can be imposed by the courts in case of non-compliance.

2.4 Governmental prior approval - Foreign investments regulation

Foreign investments are not restricted in Japan and are only subject to reporting upon completion (as opposed to prior authorization), unless they relate to certain specific sensitive activities as defined in the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1 December 1949, the "**FEFTA**"). As a general rule, unless any of the following exemptions applies, the purchase by a foreign investor of 1% or more of the listed shares of a Japanese public company conducting sensitive activities requires prior notice ("**Prior Notice**") by the foreign investor to the Ministry of Finance ("**MoF**") and other relevant ministers of Japan through the Bank of Japan ("**BoJ**"):

(a) foreign financial institutions (including but not limited to security houses, banks, insurance companies and investment management business operators) that hold a license or are registered under Japanese laws, or are subject to foreign financial regulations and supervisions by the competent foreign authorities equivalent to those under Japanese laws, will be exempted from any requirement of the Prior Notice in the event that such foreign financial institutions: (i) are not and will not be appointed as a director or other statutory officer and its "closely related person" is not and will not be appointed to such positions. The scope of "closely related person" differs depending on who makes a proposal for such appointment, i.e., the foreign investor by itself or a third party, (ii) will not submit proposals to shareholders meetings to transfer or dissolve the business that corresponds to the company's sensitive activities, and (iii) will not have access to non-public technical information concerning the business that corresponds to the company's sensitive activities (such conditions from (i) to (iii), the "**Exemption Conditions**"); provided that: (A) securities houses that are registered as a Type 1 Financial Instruments Business and conduct securities-related business under the FIEA, (B) banks holding a bank license under the Banking Act of Japan, or (C) other foreign financial institutions who hold a registration or license equivalent to a Type 1 Financial Instruments Business or banking license under foreign laws and maintain proper conflict management measures are not deemed to breach condition (iii) above to the extent that the non-public technical information is obtained (X) with the consent of the subject listed company (e.g., request for disclosure of due diligence information in friendly transactions) or (Y) through their investment banking service division retained by a person other than the subject listed company (e.g., request for disclosure of due diligence information in hostile transactions) on the basis that they implement proper measures (I) to insulate such non-public technical information from their trading division and any third party other than the person who retained their investment banking service division and (II) to prevent any influential power deriving from their shareholding in the subject listed company from being used for information requests;

(b) general foreign investors (other than sovereign wealth funds and public pension funds) will be exempted from the requirement of the Prior Notice in the event that such foreign investors (i) intend to acquire shares in a listed company whose sensitive activities do not include any of the core sensitive activities and (ii) satisfy all of the Exemption Conditions;

(c) general foreign investors (other than sovereign wealth funds and public pension funds) will be exempted from the requirement of the Prior Notice until they acquire 10% or more of the listed shares, in the event that such foreign investors (i) intend to acquire shares in a listed company whose sensitive activities include any of the core sensitive activities, (ii) satisfy all of the Exemption Conditions, (iii) are not and will not be involved in any committee that makes material business decisions concerning the company's core sensitive activities, and (iv) will not make any written proposal to the board of directors, any committee that makes material business decisions or any members thereof requesting answers or certain actions concerning the company's core sensitive activities by a specific deadline (conditions (iii) and (iv) being "**Additional Conditions**");

(d) foreign sovereign wealth funds and public pension funds will be exempted from the requirement of the Prior Notice in the event that such foreign sovereign wealth funds and public pension funds (i) have obtained the exemption certificate from the MoF, (ii) intend to acquire shares in a listed company whose sensitive activities do not include any of the core sensitive activities and (iii) satisfy all of the Exemption Conditions; and

(e) foreign sovereign wealth funds and public pension funds will be exempted from the requirement of the Prior Notice until they acquire 10% or more of the listed shares, in the event that such foreign sovereign wealth funds and public pension funds (i) have obtained the exemption certificate from the MoF, (ii) intend to acquire shares in a listed company whose sensitive activities include any of the core sensitive activities, (iii) satisfy all of the Exemption Conditions and (iv) satisfy all of the Additional Conditions.

The MoF will take into account the following factors when determining whether to grant the exemption certificate to foreign sovereign wealth funds and public pension funds:

(a) whether forms of investments by such funds are purely for the purpose of obtaining economical profits; and

(b) investment decisions of such funds are made independent from the foreign governments etc.

In connection with the distinction between "core sensitive activities" and other sensitive activities, the MoF published a list of listed companies that categorizes (i) companies which engage in any of the core sensitive activities, (ii) companies which engage in sensitive activities other than core sensitive activities and (iii) companies which do not engage in any sensitive activities. The latest list was updated on 13 September 2024 and is available at: https://www.mof.go.jp/policy/international_policy/gaitame_kawase/fdi/list.xlsx. It should be noted that this list was prepared for reference purposes only, meaning it is a foreign investor's own responsibility to conduct its analysis on such categorization based on the criteria set out in the relevant subordinate legislation.

Where the Prior Notice is required, a foreign investor may not make an investment for a period of 30 days after the acceptance of the notice by the BoJ. In practice, this period is normally shortened to two weeks if the proposed investment does not attract any concern about Japan's national security, public order or public safety. In addition, where such Prior Notice is required, the foreign investor must file an execution report through the BoJ within 45 days after the acquisition occurs.

If the MoF and other relevant ministers of Japan require more time to assess whether the investment is likely to impair national security, impede public order or compromise public safety, the waiting period can be extended up to five months, during which period the ministries may order the foreign investor to discontinue or modify the proposed investment.

Where no Prior Notice is required for an investment in a listed company engaging in sensitive activities by virtue of any of the exemptions mentioned above, (i) a general foreign investor must file an after-the-fact report through the BoJ within 45 days after its shareholding in the listed company reaches each of the 1%, 3% and 10% thresholds (and any further acquisition after 10%) and (ii) a foreign financial institution must file an after-the-fact report through the BoJ within 45 days after its shareholding in the listed company reaches the 10% threshold (and any further acquisition after 10%). For the sake of completeness, where no Prior Notice is required due to the reason that a listed company does not engage in any sensitive activities, a foreign investor must file after-the-fact report through the BoJ within 45 days after its shareholding in the listed company reaches 10% (and any further acquisition after 10%).

Please note that the definition of "inward investment" that requires Prior Notice includes certain additional activities by a foreign investor that do not necessarily entail a purchase of shares in a listed company. Such additional activities include consent to the proposal at the shareholders meeting of a listed company engaging in any of the sensitive activities where a foreign investor owns 1% or more of the total voting rights of that listed company (i) to appoint itself or its "closely related person" as a director or other statutory officer of a listed company (regardless of whether such proposal is made by itself or a third party), (ii) to transfer or dissolve the business that corresponds to the company's sensitive activities (only if the proposal is made by such foreign investor); and where a foreign investor owns one-third or more of the total voting rights of that listed company; or (iii) to amend the business purposes of the company to include additional sensitive activities. This means that even after a foreign investor has legally acquired 1% or more of the shares in a listed company in compliance with the requirement of the Prior Notice (or in reliance on available exemptions therefrom), such foreign investor must file another Prior Notice before giving consent to the aforementioned proposals.

Further, Japanese laws regulating specific business activities restrict investments by a foreign investor or set the upper limit of holding ratio by foreign nationals. The major industries to which these rules apply include the following:

- **Airlines**: Foreign investors are not permitted to acquire one-third or more of the voting rights in Japanese airline companies.
- **Broadcasting**: Foreign investors are not permitted to acquire 20% or more of the voting rights in general broadcasting and communications companies and other similar companies.
- **Telecommunications**: Foreign investors are not permitted to acquire one-third or more of the voting rights of Nippon Telegraph and Telephone Corporation.

2.5 Corporate Governance Code

Japan introduced the Corporate Governance Code in 2015. While this code's primary purpose is to enhance the corporate governance of Japanese listed companies in relation to the general principle to secure shareholder rights and effective equal treatment of shareholders, it does include a supplemental principle that requires a listed company to clearly explain the position of the board on a tender offer and not to take measures that would frustrate shareholders' rights to sell their shares in response to a tender offer. The Corporate Governance Code was amended in 2018, which was the first amendment since 2015, with the aim to further promote sustainable growth and increase the corporate value of Japanese listed companies over the mid to long-term. The Corporate Governance Code was also amended in June 2021, mainly to enhance board independence, promote diversity and place greater emphasis on sustainability and ESG matters.

2.6 Introduction of Fair M&A Guidelines

Japan introduced the Fair M&A Guidelines in June 2019. The Fair M&A Guidelines provide for the best practice to protect the interests of the general shareholders of a listed target by requiring the target and the acquirer (as applicable) to implement various measures to ensure the fairness of the transaction ("**Fairness Ensuring Measures**") where the acquirer is (i) a controlling shareholder, or (ii) a management member of the target, which inherently entails the risk that the best interests of the general shareholders are not fairly represented by the board of directors of the target due to an existence of a structural conflict of interests. The Fair M&A Guidelines also clarify that the best practice recommended by the Fair M&A Guidelines needs to be taken into account when implementing a transaction where a similar structural conflict of interests exists.

The Fairness Ensuring Measures set out in the Fair M&A Guidelines include (i) establishment of an independent advisory board to evaluate the transaction, (ii) obtaining expert advice from independent external advisors, (iii) allowing (and not agreeing on the deal protection measure that may prevent) market checks, (iv) setting a majority of minority condition in the proposal, (v) enhancing information disclosure to the general shareholders and transparency of the process, and (vi) avoiding coerciveness. The relevant target and the acquirer are not necessarily required to implement all of such Fairness Ensuring Measures and may elect to adopt all or some of such measures by taking into account the degree of structural conflict of interests between the acquirer and the general shareholders and any other specific circumstances.

2.7 Guidelines for Corporate Takeovers

On 31 August 2023, the Ministry of Economy, Trade and Industry ("**METI**") published the Guidelines for Corporate Takeovers – Enhancing Corporate Value and Securing Shareholders' Interests (the "**Corporate Takeover Guidelines**"). The Corporate Takeovers Guidelines have been prepared to improve predictability and ensure best practices for parties involved in acquisitions and market participants and encourage economically beneficial acquisitions.

Chapter 2 of the Corporate Takeovers Guidelines presents the following three principles that should generally be respected when acquiring control of listed companies.

- Principle 1: Principle of Corporate Value and Shareholders' Common Interests
- Principle 2: Principle of Shareholders' Intent
- Principle 3: Principle of Transparency

Chapter 3 of the Corporate Takeovers Guidelines sets out the phased approach to acquisition proposals under the code of conduct for each director and board of directors of the target.

Chapter 4 of the Corporate Takeovers Guidelines describes how transparency in acquisitions should be improved from the perspective of both the bidder and the target in order to realize Principles 2 and 3 (i.e., the principles of shareholders' intent and transparency).

Chapter 5 of the Corporate Takeovers Guidelines describes key factors to ensure transparency and fairness of takeover response policies and countermeasures, namely (i) respecting shareholders' intent (i.e., obtaining shareholders' approval for adopting and implementing takeover defense), (ii) verifying the necessity and appropriateness of countermeasures, (iii) prior disclosure of takeover response policies, and (iv) promoting dialogue with market participants.

2.8 Reforms

On 15 May 2024, the bill to partially amend the FIEA, including amendments to the Tender Offer Rules, was enacted and promulgated (the "**Amendment Act**"). The amendments in relation to the Tender Offer Rules will take effect on the date designated in the cabinet order within two years from the promulgation (the "**Effective Date**"). The below summarizes the key changes from the current Tender Offer Rules.

(a) Application of one-third rule to on-market auction trading

As further explained in 4.1 below, in Japan the mandatory tender offer requirement is triggered mainly (i) where the bidder proposes to purchase shares in excess of 5% of the total number of voting rights of the target from more than 10 shareholders in a period of 61 days ("**61-day Aggregation Period**") through off-market trading, or (ii) where the bidder proposes to purchase shares with the result that the bidder will hold shares in excess of one-third of the total number of voting rights of the target, irrespective of the number of shareholders involved through off-market trading and/or on-market non-auction trading (the former is known as the "5% rule" and the latter is known as the 'one-third rule'). On the other hand, on-market auction trading is in principle not subject to the 5% rule nor the one-third rule based on the view that transparency and fairness are generally ensured through auction in the market.

However, in recent times, some instances have been observed where more than one-third of voting rights were acquired in a short period through on-market auction trading, and the Report of The Working Group on Tender Offer Rule and Large Shareholding Reporting Rule published on 25 December 2023 (the "**WG Report**") recommended that on-market auction trading should be made subject to the one-third rule from the perspective of ensuring transparency and fairness of securities transactions, which may have a material impact on corporate control.

Under the Amendment Act, the current language in the FIEA limiting the application of the one-third rule to off-market trading is removed, as a result of which the one-third rule (which is lowered to the "30% rule" as explained in (b) below) will be applicable to on-market trading (whether on-market auction trading or non-auction trading) after the Effective Date. In addition, the special one-third rule under the current Tender Offer Rules which restricts a combination of off-market trading and on-market trading (see 4.1(c) below for more details) has also been abolished as on-market trading and off-market trading are equally treated for the purpose of the one-third rule under the Amendment Act, which renders this special rule mostly redundant.

(b) Lowering of one-third rule

The current Tender Offer Rules adopted the one-third rule on the basis that one-third is the percentage that can block special resolutions at the general meeting of shareholders (see 3.1 below). However, the WG Report pointed out that a 30% threshold is used in the tender offer rules of some major countries and taking into account the actual ratio of voting rights exercised, 30% may be large enough to constitute a blocking position on special resolution matters.

Under the Amendment Act, following the recommendation of the WG Report, the one-third rule threshold has been lowered to 30%, which will come into effect from the Effective Date.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Japanese listed company:

Shareholding	Rights
One share	• The right to attend and vote at the general meeting of shareholders. • The right to ask questions and to make proposals at the general meeting of shareholders. • The right to commence an action for the rescission or nullity of a resolution at the general meeting of shareholders. • The right to commence an action on behalf of the company to pursue the liabilities of directors and company auditors. • The right to demand the suspension of unlawful or unfair issuance of new shares, merger, stock swap or company split. • The right to demand commencement of special liquidation procedures. • The right to demand inspection of financial statements.
1%	• The right to propose agenda items at the general meeting of shareholders. • The right to request a court appointed inspector to investigate the convening and resolution procedures for the general meeting of shareholders.
3%	• The right to demand an extraordinary general meeting of shareholders. • The right to demand to inspect the books, records and relevant documents of the company. • The right to request a court to review a majority decision not to remove a director for wrong-doing. • The right to demand court-supervised inspection of the company's operation and finances.
10%	The right to request a court to review dissolution of the company for unavoidable reasons.
One-third plus one share	Negative control – the ability to veto special resolutions at the general meeting of shareholders.

Shareholding	Rights
Majority	The ability to pass an ordinary resolution at the general meeting of shareholders: • to appoint and dismiss directors and company auditors; • to approve financial statements (in cases where the board may not approve them due to qualified audit reports or other reasons); • to reduce the capital reserve; and • to appoint an inspector to investigate documentation submitted to the shareholders' meetings.
Two-thirds	The ability to pass a special resolution at the general meeting of shareholders: • to approve a merger, business transfer, stock swap or company split; • to amend the articles of incorporation; • to reduce stated capital; and • to dissolve the company.
90%	• Special Controlling Relationship - the right to request other shareholders and holders of stock options to sell their shares and stock option. • The ability to implement a merger, stock swap or company split without approval of the general meeting of shareholders.

3.2 Methods of acquisition of listed companies

In addition to the public tender offers that are regulated in Japan, including exchange offers, there are alternative methods of acquisition of listed companies in Japan. These include the acquisition of new shares through third party allotment, merger (*gappei*) and stock swap (*kabushiki koukan*) under the Companies Act. These alternative measures are also subject to the disclosure requirements under the FIEA and the stock exchange rules, insider trading and market manipulation rules, merger control and foreign securities regulations. The bidder should carefully consider the pros and cons, as well as the suitability of these alternative measures under the specific circumstances concerned. These alternative methods are not further discussed herein.

3.3 Disclosure of shareholding

Under the FIEA, an investor is required to file a substantial shareholding report within five business days after it becomes a beneficial holder of more than 5% of the outstanding shares of a listed company. Further, an amendment report to the substantial shareholding report is required to be filed within five business days if the shareholding percentage in the listed company increases or decreases by 1% or more. When determining whether or not a threshold has been passed, the shares held by certain related persons or persons with whom the investor has entered into certain agreements, e.g., voting agreements, must also be counted towards the shareholding percentage.

3.4 Timely disclosures by the target and the bidder

The target and the bidder, if a listed company in Japan, must continue to comply with the normal disclosure rules under the FIEA and the applicable stock exchange rules. Please see 5 for the disclosure requirements in relation to public tender offers in Japan. If any disclosure is made by the target prior to or during the tender offer period, the bidder should consider whether or not such disclosure has any impact on the documentation for the tender offer. For instance, if the target files a quarterly financial report containing material information, e.g., changes to the target's directors, during the tender offer period, an amendment to the tender offer registration statement may need to be filed by the bidder. Furthermore, if the bidder is a listed company, its decision to launch a tender offer must be announced in a timely manner in accordance with the rules of the relevant stock exchange.

3.5 Insider dealing and market manipulation

Before, during and after a tender offer, the normal rules regarding insider dealing remain applicable. The FIEA defines inside information which is subject to the insider trading rules thereunder. In addition to inside information relating to the target or its group companies or certain major shareholders, the bidder's decision to conduct or cancel a tender offer or other acquisition of 5% or more of the outstanding shares of a listed company is regarded by the FIEA as another category of inside information (see 6).

The FIEA prohibits, among other things, market manipulation, spreading rumors or using fraudulent means for the purpose of trading or affecting the market price of the target's stock.

3.6 Due diligence

The Japanese public tender offer rules do not contain any specific rules regarding whether or not, or how, a prior due diligence can be organized. The concept of a prior due diligence by a bidder is generally accepted in the market, and appropriate mechanisms have been developed in practice to organize a prior due diligence and to deal with insider trading rules.

3.7 Anti-takeover measures

Some Japanese listed companies have introduced anti-takeover measures to deal with unsolicited offers. Japanese listed companies are required to disclose anti-takeover measures. The common approach regarding anti-takeover measures in Japan is an advance warning-type rights plan introduced in a normal phase (i.e., when the target is not aware of an acquisition plan or proposal or commencement of an acquisition by any bidder) (the "**Advance Warning Type Rights Plan**") under which the target requests the bidder to provide sufficient information so that the target's board or shareholders may properly evaluate the contemplated offer before the target triggers the rights plan that would dilute the bidder's shareholding or otherwise frustrate the bidder's offer. However, after the introduction of the Corporate Governance Code, the number of listed companies introducing the Advance Warning Type Rights Plans has decreased. Shareholders (especially institutional shareholders) generally consider such plans to not be in their best interest, therefore making it difficult to secure their approval of such plans.

Since 2020, we have seen a number of cases in which the target has introduced a rights plan in an emergent phase (i.e., after the target becomes aware of an acquisition plan or proposal or commencement of an acquisition by an unsolicited bidder) (the "**Emergent Phase Rights Plan**") with a view to defend against a hostile offer by a specific unsolicited bidder. Please see 6.4 for more details on common anti-takeover defense mechanisms in Japan.

If the target has introduced anti-takeover measures (including the Advance Warning Type Rights Plan), the bidder should carefully review such measures and plan in advance before approaching the target or commencing a tender offer. Even if the target has not introduced an Advance Warning Type

Rights Plan, a bidder that is contemplating a hostile offer should bear in mind the possibility of the target introducing the Emergent Phase Rights Plan.

4. Effecting a Takeover

4.1 Mandatory tender offer requirement

The general Japanese regulatory approach relating to tender offers is that they are required only where:

(a) the target is a company obligated to file annual securities reports under the FIEA; and

(b) the bid falls into one of the circumstances described below.

Since all Japanese listed companies are obligated to file annual securities reports, it is important that if a person intends to obtain control of a listed company by purchasing shares in such company, they need to consider whether the Tender Offer Rules will apply. Where the requirements are met, the bidder is required to launch a tender offer to all shareholders at the same price.

In general, if a bidder intends to purchase shares and such other equity types of securities, e.g., share options (*shinkabu yoyakuken*) and bonds with share options, of the target in the following circumstances, such purchases may only be made through a tender offer in compliance with the Tender Offer Rules:

(a) The bidder proposes to purchase shares in excess of 5% of the total number of voting rights of the target from more than 10 shareholders in the 61-day Aggregation Period through off-market trading.

(b) The bidder proposes to purchase shares with the result that the bidder will hold shares in excess of one-third of the total number of voting rights of the target, irrespective of the number of shareholders involved through off-market trading and/or on-market non-auction trading.

(c) The bidder proposes to purchase shares, within a three-month time frame, of (i) 10% or more of the total number of voting rights of the target in aggregate through any or, a combination of, off- market trading, on-market trading and/or subscription of new shares and (ii) at least 5% (of the total number of voting rights of the target) of such share purchase is via off-market trading and/or on-market non-auction trading, with the result that the bidder holds shares in excess of one-third of the total number of voting rights of the target.

(d) The bidder already holds more than one-third of the total number of voting rights of the target and wishes to purchase further shares in excess of 5% of the total number of voting rights in the target through on-market auction trading after the launch of a tender offer by a third party. For the avoidance of doubt, although the FIEA does not specify the type of trading for the purchase of further shares in circumstance (d), any purchase through off-market trading and/or on-market non- auction trading (whether in excess of 5% or not) by a bidder who already holds more than one-third of the total number of voting rights in the target shall always simultaneously trigger the above circumstance (b), and as such, circumstance (d) is considered to target only on-market auction trading.

In addition, if the bidder seeks to acquire shares with the result that the bidder will hold two-thirds or more of the total number of voting rights, the bidder will be required to make the offer to purchase to all shareholders and purchase all tendered shares from all offerees.

Under the Tender Offer Rules, any shares in the target owned by "Persons in a Special Relationship" with the bidder must be aggregated with the shares acquired by the bidder in the target for purposes of the foregoing tender offer thresholds. "Persons in a Special Relationship" include the following:

(a) where the bidder is an individual, persons having a special relationship are: (i) that person's relatives (that is, that person's spouse, relative by blood and relatives by marriage to the first degree of kinship ("**Relatives**")) and (ii) corporations (and their directors and officers) in which the individual owns 20% or more of the total number of voting rights, together with the individual's Relatives;

(b) where the bidder is a corporation, persons having a special relationship are: (i) the bidder 's directors and officers; (ii) corporations (and their directors and officers) in respect of which 20% or more of the shares are owned by the bidder (including the shares owned by any subsidiary corporation, i.e., a corporation in which the bidder owns more than 50% of the total number of voting rights) and (iii) individuals of corporations (and their directors and officers) who own 20% or more of the total number of voting rights of the bidder (including the shares owned by any subsidiary of such corporations); and

(c) persons who enter into an agreement with the bidder to jointly acquire or transfer shares, or exercise rights, such as voting rights, to which they are entitled as shareholders, or who enter into an agreement to transfer or acquire such shares to or from each other after purchasing the company's shares.

4.2 Purchases excluded from the application of the tender offer requirement

In general, purchases made on the Financial Instruments Exchange Markets are exempted from the Tender Offer Rules (subject to certain limited exceptions mentioned in 4.1(b) and (c) above). In addition, purchases of shares in the following circumstances are excluded from the operation of the Tender Offer Rules:

(a) Exercise of share options and others - Purchases made by the exercise of share options, exercise of rights to allot shares, exercise of rights to subscribe to new shares granted in a rights issue and conversion of shares into another class of shares by shareholders are excluded.

(b) Acquisition by parent - Purchases by the parent of the target from 10 or fewer shareholders during the 61-day Aggregation Period with the result that the parent will hold less than two-thirds of the total number of voting rights are excluded.

(c) Transactions within a group - Purchases of shares from Persons in a Special Relationship or affiliated companies are excluded under certain conditions.

(d) Consent by all shareholders - The Tender Offer Rules are not applicable if the total number of shareholders is less than 25 and all the shareholders agree in writing to the purchase of shares without conducting a tender offer. Please note, however, that if the ratio of shareholding after the purchases with such consent will result in two-thirds or more, such purchases are only exempt when either (i) the approval of the meeting of the holders of the classes of shares or (ii) the written consent of all holders of the class of shares (only if the number of such holders is less than 25) is obtained for all classes of shares other than the class of shares to be acquired.

(e) Others - Acquisition of shares by enforcing a security interest in respect of the shares, acquisition through merger, share swap, corporate split or acquisition of all or part of a business are all not subject to the Tender Offer Rules. In addition, certain types of periodic acquisitions by officer shareholding or employee shareholding associations that fulfil certain preconditions, as well as some other acquisitions under exceptional situations, are also exempted.

4.3 Purchase price

The purchase price under a tender offer must be the same for all shareholders. However, it is possible to structure the offer to give shareholders a choice of two or more different payment alternatives, e.g., cash or securities. Under the Tender Offer Rules, other than cash, consideration may also take the form of shares and other securities. However, in Japan, it is most common for the bidder to use cash as the form of consideration. Each type of payment structure must be the same for all of the offeree shareholders.

There is no legal rule in relation to the price level in Japan, but the common valuation process is as follows:

(a) The bidder performs its valuation of the target and provides for the rationale behind the determination of such offer price in the tender offer registration statement.

(b) The target obtains its own valuation from an independent third party appraiser to examine whether the price offered by the bidder is fair and reasonable. The target's position statement will contain the directors' recommendation as to whether or not the target's shareholders should tender their shares in the tender offer.

4.4 Minimum and maximum acceptance condition

The offer may be subject to a minimum acceptance condition if the condition is explicitly included in the tender offer registration statement in advance. If the minimum acceptance condition is satisfied, the bidder will be bound to purchase the number of specified shares at the very least. If the tender offer is under-subscribed, the bidder, by virtue of having attached the condition to the offer, may withdraw the bid. The offer may also be subject to a maximum acceptance condition if the condition is included in the tender offer registration statement in advance. The bidder, however, is not permitted to include a maximum acceptance condition if, after the acquisition, it intends to hold two-thirds or more of the target's voting shares. If the bidder receives acceptances in excess of the amount stipulated in the maximum acceptance condition, the bidder will be permitted to refuse to acquire the excess shares on a pro-rata basis.

4.5 Amending purchase conditions

Although the bidder is, as a rule, free to amend its purchase conditions, it may not make amendments to certain conditions that are clearly detrimental to the offerees, such as reducing the purchase price, reducing the projected number of shares to be purchased or shortening the tender offer period, except where the target implements certain anti-takeover defenses.

4.6 Prohibition on independent purchase by the bidder

Subject to certain limited exceptions, the bidder and any Persons in a Special Relationship must not purchase shares in the target other than through a tender offer during the tender offer period.

4.7 Withdrawal of a tender offer

Under the Tender Offer Rules, a bidder's withdrawal of a tender offer is strictly restricted. A bidder may withdraw the tender offer only upon the occurrence of any of the following:

(a) certain corporate decisions, such as merger, sale of substantial assets, dissolution, bankruptcy and exercise of the anti-takeover defense made by the target or its subsidiary (being limited to decisions announced on or after the day of the public notice of commencing a tender offer);

(b) corporate decisions to maintain the anti-takeover defense made by the target;

(c) the occurrence of certain material events in relation to the target, such as bankruptcy, the filing for an injunction order seeking the cessation of the target's business, an administrative order to cease the operation of the business, the termination of the business relationship with a major customer, damage sustained from a disaster, the commencement of litigation, or the delisting of shares (being limited to events that occurred on or after the day of the public notice of commencing a tender offer);

(d) if any governmental permit necessary for the acquisition of the shares in the target specified in the tender offer registration statement has not been granted before the last day of the tender offer period;

(e) any events provided under the Tender Offer Ordinance which are deemed to be equivalent to items of (a) through (d) above; or

(f) any major changes to the situation of the bidder, such as its bankruptcy.

On the other hand, an offeree may cancel its agreement to sell shares in connection with a tender offer at any time during the tender offer period. Furthermore, the bidder cannot claim compensatory or punitive damages as a result of the cancellation of the agreement by an offering shareholder, and the bidder will be liable for the cost of returning to the offeree any shares delivered to the custody of a securities company or a bank.

5. Timeline

The table below contains a summarized overview of the main steps of a typical friendly tender offer under Japanese law:

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing, draft of tender offer registration statement and the public notice of commencing a tender offer). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders. • Retaining a local securities company to handle the procedures for the custody and return of shares tendered and the payment of the purchase price in the tender offer process. • Prior consultation with the Kanto Local Financial Bureau in relation to the contents of the tender offer registration statement (although this is not a legal requirement, according to the website of the Kanto Local Financial Bureau, around two weeks (or three weeks, if the bidder contemplates raising funds from external sources and prior consultation is required before the tender offer registration statement is formally filed with the MoF). • Internal approval of launching the tender offer by the bidder. • Internal approval of the contents of the target's position statement by the target. • Press release regarding the tender offer by the bidder (if applicable) and the target on the day immediately before the formal launch of the tender offer.
2.	Launching of the bid: • The bidder publishes the public notice of commencing a tender offer via the Electronic Disclosure for Investors' NETwork ("**EDINET**"), followed by a public notice in a nationwide daily newspaper generally reporting domestic current events. As of that moment, the bidder can no longer withdraw the tender offer (except in the certain limited circumstances mentioned in 4.7 above).

Step	
	• The bidder files the tender offer registration statement via EDINET with the MoF on the same day as the date of the notice of commencement of tender offer above. • The bidder forwards a copy of the tender offer registration statement to the target and other persons who have launched a tender offer to the same target (if any). • The bidder delivers a tender offer prospectus to each shareholder who wishes to sell shares either in advance or at the same time of such sale. • Counter-bids and higher bids can be filed.
3.	Filing of target position statement by the target's board: • The target files the position statement via EDINET within 10 business days after the public notice of commencing a tender offer was made (although in a friendly tender offer, the target normally files the target position statement on the same day as the date of the notice of commencement of tender offer by the bidder). The target may include, in the same statement, inquiries addressed to the bidder and if the tender offer period is less than 30 business days, a request that the tender offer period be extended to 30 business days. • The target forwards a copy of the position statement to the bidder and other persons who have launched a tender offer to the same target (if any).
4.	Tender offer period: • Start: immediately after the public notice of commencing a tender offer was made. • Duration: not less than 20 business days but not more than 60 business days.
5.	Amendment to purchase conditions: • If the bidder wishes to amend the purchase conditions of the tender offer during the tender offer period, it must notify such amendment via EDINET followed by making a public notice in a nationwide daily newspaper generally reporting domestic current events and filing the amended tender offer registration statement.
6.	Publication of results: • The bidder makes a public announcement regarding the tender offer result (or publishes a notice of the tender offer result via EDINET followed by a public notice in a nationwide daily newspaper generally reporting domestic current events) on the day following the last day of the tender offer period. • The bidder files the report of the tender offer result via EDINET with the MoF on the same day as the public announcement (or public notice) of the tender offer result above. • The bidder forwards a copy of the report of the tender offer result to the target and other persons who have launched a tender offer to the same target (if any). • The bidder delivers a purchase notice to the tendering shareholders promptly upon the close of the tender offer period.

Step	
7.	Payment of the offered consideration by the bidder (usually within five business days of end of the tender offer period).

Set out below is an overview of the main steps for a public friendly takeover offer in Japan.

Public friendly takeover offer (indicative timeline)

Start process

Day 0

Launch of bid. Bidder submits notice of commencing offer (which is to be published effective from Day (X)) via Electronic Disclosure for Investors' NETwork (EDINET) and in nationwide newspaper

Day (X)

Start of tender offer period (immediately after notice commencing tender offer is published)

Bidder:

- files offer registration statement with Ministry of Finance (via EDINET)
- forwards copy of statement to target
- sends offer prospectus to shareholders wishing to sell shares

Counter/higher bids can be filed

Target board files position statement via EDINET (within 10 business days after public notice commencing tender offer is published) and forwards copy to bidder(s)

Bidder must from time to time notify any amendments to purchase conditions:

- via EDINET and in nationwide newspaper
- by filing amended tender offer registration statement

Day 60

End of tender offer period

Day 61

Publication of results. Bidder:

- makes public announcement (or publishes notice via EDINET and in nationwide newspaper) on the day following the last day of the tender offer period
- Files report with Ministry of Finance (via EDINET) and forwards copy to target
- Delivers purchase notice to tendering shareholders

Day 65

Payment of offered consideration by bidder (usually within 5 business days of end of tender offer period)

Duration of tender offer period is not less than 20 business days and not more than 60 business days

6. Takeover Tactics

6.1 Inside information

A Japanese listed company is obligated under the stock exchange rules to disclose to the public in a timely manner all "inside information" that relates to it, including all material changes to information that has previously been disclosed to the public.

- "Inside information" generally means information that has not been made public, relating, directly or indirectly, to issuers of financial instruments which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. One of the characteristics of the Japanese insider trading rules is that the inside information which will give rise to the prohibition of insider dealing is specified by the statute.
- Article 166, Paragraph 2 of the FIEA defines the term "Material Facts" and lists out the events constituting Material Facts, the knowledge of which will trigger the prohibition on dealing in the relevant company's financial instruments. Those Material Facts can be categorized into the followings four groups:
  - (i) certain corporate actions decided by the decision-making body of a listed company or its subsidiaries, such as a merger, share swap, company split, transfer of shares with change in a subsidiary and business alliance;
  - (ii) certain factual circumstances that occurred in a listed company or its subsidiaries, such as material damage caused by disaster or business operations, material litigation or change in the major shareholders;
  - (iii) change in forecasts of sales, ordinary profits and net profits of a listed company or its subsidiaries; and
  - (iv) general catch-all.

  The general catch-all set out in (iv) above means any material facts other than those referred to in (i), (ii) and (iii) which have an important bearing on the management, business or property of a listed company or its subsidiaries and may have a material influence on the investment decisions of investors. It is up to the holder of inside information to determine if certain information qualifies as a Material Fact covered by the general catch-all. This will often be a difficult exercise, and a large gray area will exist as to whether certain events constitute a Material Fact or not.
- Article 167 of the FIEA also stipulates that the knowledge of a tender offer or a buyout of 5% or more of the issuer's shares by others ("**Tender Offer and Similar Accumulated Purchase**") constitutes inside information, the knowledge of which will give rise to the prohibition on dealing in the relevant company's financial instruments.
- Even if information falls under any of the above, if such information is deemed as having an insignificant impact on the investment decisions of investors pursuant to the standards set forth in the Cabinet Office Ordinance on Restrictions on Securities Transactions, etc. (Ordinance of the Ministry of Finance No. 59 of 8 August 2007), such information does not constitute a Material Fact.

6.2 Insider dealing regulations

The basic legal framework regarding insider dealing and market abuse under Japanese law is set forth in Article 166 and Article 167 of the FIEA.

Under Article 166, a person who becomes aware of a Material Fact (a "**Corporate Insider**") is prohibited from buying or selling the financial instruments of the issuer before such information becomes publicly available by the issuer through a public announcement.

Similarly, under Article 167, a person who becomes aware of a Tender Offer and Similar Accumulated Purchase contemplated by others (a "**Tender Offer Insider**") is prohibited from buying or selling the financial instruments of the relevant company unless:

(a) such information is disclosed by such competing bidder through a public announcement;

(b) the Tender Offer Insider discloses in its own tender offer announcement the information about the Tender Offer and Similar Accumulated Purchase contemplated by such competing bidder, including the name of the competing bidder, timing and certain other matters regarding such contemplated Tender Offer and Similar Accumulated Purchase; or

(c) six months have passed after the Tender Offer Insider was informed of such contemplated Tender Offer and Similar Accumulated Purchase.

6.3 In the event of a public tender offer

In the event that a bidder contemplating launching a tender offer obtains, during due diligence or by other means, information constituting a Material Fact in relation to the target, the bidder may not launch the tender offer before such Material Fact is disclosed by the target, otherwise the bidder, as a Corporate Insider, would violate the insider dealing regulations described above.

If this is the case, the bidder has no choice but to request the issuer to disclose such Material Fact before the launch of the tender offer.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover. Among the measures below, the most popular mechanism is the Advance Warning Type Rights Plan utilizing share options which have a discriminatory exercise condition attached that prevents the hostile bidder from exercising takeover rights. Please note however that as mentioned in 3.7 above, the number of listed companies introducing the Advance Warning Type Rights Plans has decreased after the introduction of the Corporate Governance Code.

Mechanism	Assessment and considerations
1. Advance Warning Type Rights Plan An outline of the typical Advance Warning Type Rights Plan is as follows: • Advance warning is provided by target company disclosing the details of the rights plan; • When a hostile takeover is imminent from a party who holds or will hold more than a set percentage (usually 20%), in accordance with the advance warning, the target company will request the hostile bidder to provide the necessary	• A pre-condition for the issuance of the Share Options with Discriminatory Terms under this type of plan is that the corporate value of the target company would be reduced if it were not for the issuance of the new share options under the plan. • The legality of an Advance Warning Type Rights Plan depends on: • the specific conditions surrounding the decision to issue the new share options;

Mechanism	Assessment and considerations
information relating to the hostile bidder, the purpose of the takeover and the proposed management policies after the takeover; - The board of directors of the target company examines and analyzes the hostile takeover proposal according to the submitted information; - If the board of directors determines (in the case where an independent adviser is retained, its recommendation will be taken into account) that the hostile bidder triggers the defense measures, all shareholders are allocated new share options which have a discriminatory condition attached that prevents the hostile bidder from exercising the rights (the "**Share Options with Discriminatory Terms**"); and - All shareholders, other than the hostile bidder, acquire new shares at a price lower than the current market price, thereby diluting the share ownership ratio of the hostile bidder.	- the content of the new share options; - the issuance procedures; and - other individual circumstances. - Even if the plan on its face appears to be legal, upon implementation, the procedures must be properly carried out or the issuance of the new share options may be judged to be illegal.
2. Emergent Phase Rights Plan The basic structure of this plan is the same as the typical Advance Warning Type Rights Plan with the following additional features: - usually introduced to deal with a hostile offer by a specific bidder or its affiliates ("**Hostile Bidder Group**"); - introduced by board resolution but the defense measure can be invoked only if the plan is approved by a simple majority of the attending shareholders with	- This counter measure can be introduced even after the target company becomes aware of the existence of a potential hostile bidder, however the courts are likely to use a stricter standard to decide the legality of this anti-takeover defense method compared to the Advance Warning Type Rights Plan. - In contrast to the Share Options with Discriminatory Terms, the share options used in the Emergent Phase Rights Plan are usually structured as follows: - the Hostile Bidder Group cannot exercise the share options (i.e.,

Mechanism	Assessment and considerations
voting rights and the bidder's offer is not withheld; and • the defense measure in many cases includes discriminatory conditions including, among others, that the target will acquire the issued share options from all of its shareholders but deliver (i) common shares to shareholders other than the Hostile Bidder Group; and (ii) another type of share option to the Hostile Bidder Group with different exercise conditions.	discriminatory exercise conditions); and • if the target acquires the share options from all of its shareholders: (i) common shares will be delivered to shareholders other than the Hostile Bidder Group; and (ii) another type of share option with different exercise conditions will be delivered to the Hostile Bidder Group (i.e., with discriminatory acquisition clauses), which the bidder can exercise to the extent it owns, after the exercise of share options, 20% (or such other percentage as specified) or less of the total voting rights. • Although, under the general principles of the Companies Act, the board of directors has authority to determine the allotment of share options, the approval of the shareholders' meeting is considered to be a requirement to make this method legal and valid given recent court rulings.
3. Issuance of new shares or share options by third party allotment New shares or share options are issued at a discount prior to the takeover in favor of friendly person(s). This method dilutes the shares owned by the party engaged in the takeover. The board of directors will approve the issue of new shares or share options to a third party.	• For the board of directors to be able to issue the shares in this manner, without the necessity of a shareholders' resolution, the shares cannot be issued at a considerable discount. • It was traditionally considered that an issuance of new shares or share options was unfair, and therefore invalid, in cases where the primary purpose for issuing the new shares or share options was to dilute a shareholder's share ownership, i.e., no specific use for the target company of the funds being raised. However, the recent trend of court rulings illustrates that even if the purpose is to dilute a hostile bidder's share ownership, the court judges the fairness of the issuance by taking into consideration that the hostile bidder is an "abusive bidder" (akin to

Mechanism	Assessment and considerations
	'greenmailers') whose intention is to acquire the shares for its own benefit without due regard to the sound management of the target company.
4. Traditional "cross-shareholding" (mochiai) arrangement In Japan, cross-shareholding traditionally refers to a mutual shareholding relationship through a network of companies on the mutual understanding that these shares are not to be traded. Such friendly shareholders within the network generally support the incumbent management from whom they earn business, rather than a hostile bidder.	• Although traditional cross-shareholdings have been reduced significantly in recent years, they remain a strong barrier to prevent acquisition by a hostile bidder.
5. Veto rights for certain shareholders The issuance of a class of shares with special veto rights (often referred to as 'golden shares') to a friendly shareholder. These 'golden shares' include the right to veto resolutions at a company's general shareholders' meeting relating to significant matters such as the election and removal of directors.	• The current stock exchange rules in Japan permit shares of this nature as long as they do not significantly infringe the interests of shareholders and investors. • These golden shares are permitted by the stock exchange only in cases where certain national policy reasons exist. To date, there has only been one listed company in Japan that had golden shares.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out by Special Controlling Shareholder

If, following the tender offer, the bidder holds (by itself and/or through its 100% direct or indirect subsidiaries) 90% or more of the total number of voting rights (such shareholder hereinafter referred to as the "**Special Controlling Shareholder**"), the Special Controlling Shareholder can force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to it subject to the approval of the board of the target company. Any of the security holders who are dissatisfied with the price offered by the Special Controlling Shareholder are entitled to statutory appraisal rights.

7.2 Alternative squeeze-out mechanisms

Even if the bidder fails to obtain 90% of the voting rights, it is still possible to effect the squeeze-out by using either of the following methods if the bidder controls more than two-thirds of the total number of voting rights. The implementation of these methods requires shareholder approval and a court order, which means that this process is more time-consuming.

(a) Share consolidation squeeze-out

A share consolidation squeeze-out can be implemented by a special resolution of the target's shareholders. A special resolution is adopted by a two-thirds majority vote of the shareholders present at a shareholders' meeting. In this squeeze-out scheme, subject to the special resolution by the shareholders, the target will conduct the stock consolidation at such a consolidation ratio that the number of shares held by each of the minority shareholders (other than the bidder) is reduced to less than one whole share, i.e., fractional shares. Thereafter, pursuant to the Companies Act, the target, on behalf of the minority shareholders, may sell all of such fractional shares to the bidder at the market price, the fairness of which must be endorsed by a court order.

(b) Call option squeeze-out

A Call option squeeze-out can also be implemented by a special resolution of the target's shareholders. In this squeeze-out scheme, subject to the special resolution by the shareholders, the target will convert all its shares into class shares subject to a call option by amending its articles of incorporation. The target will exercise such call option and issue new shares of a different class at an exchange ratio so that the number of shares newly issued to each minority shareholder (other than the bidder) in exchange of the existing shares is reduced to less than one whole share, i.e., fractional shares. Thereafter, as with the share consolidation squeeze-out (see 7.2(a)), the target will sell all of such fractional shares to the bidder at the market price, the fairness of which must be endorsed by a court order.

As a result of (a) and (b) above, only the bidder will remain as the sole shareholder and all other minority shareholders will receive cash equivalent to their shareholding. The shareholders who are dissatisfied with the price offered by the bidder are entitled to statutory appraisal rights.

Before the amendment of the Companies Act in 2014, the share consolidation squeeze-out option above was not used because of the lack of statutory appraisal rights granted to minority shareholders. This was believed to be imperative for the protection of minority shareholders who are compelled to sell their shares. However, the amended Companies Act introduced appraisal rights for dissenting shareholders to a share consolidation. In fact, the share consolidation squeeze-out has become more popular than the call option squeeze-out option (where a squeeze-out by a Special Controlling Shareholder is not available). This is due to the simplicity and legal stability of the share consolidation squeeze-out option.

7.3 Squeeze-out via merger or other corporate reorganization

A squeeze-out can also be implemented via a cash-out merger, share swap or other corporate reorganization (collectively, a "**Cash-out Reorganization**") between the bidder and the target with a special resolution by the shareholders of the target (or if the bidder is already a Special Controlling Shareholder, with the resolution of the board of directors of the target). Prior to the tax reform implemented in 2017, such Cash-out Reorganization was rarely used for effecting a squeeze-out because if cash consideration was used in a Cash-out Reorganization the reorganization was automatically treated as tax-disqualified resulting in a recognition of built-in gain /loss of assets owned by the target. However, after the implementation of the 2017 tax reform, the different tax treatment of each squeeze-out method (referred to in 7.1 and 7.2 above and the Cash-out Reorganization) has been eliminated if the bidder owns at least two-thirds of the total number of voting rights in the target prior to the squeeze-out. As a result, the Cash-out Reorganization has become a practically "usable" option to squeeze-out the minority shareholders while in practice either the squeeze-out by Special Controlling Shareholder or the share consolidation squeeze-out mentioned above is still commonly used due to its simplicity and legal stability.

8. Delisting

Listed companies in Japan may be privatized or delisted by way of a tender offer followed by a squeeze-out of all the remaining shares. The stock exchange rules provide for the delisting criteria and the implementation of any of the squeeze-out methods above meet such delisting criteria.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Akifusa Takada, Jiro Toyokawa, Tetsuo Tsujimoto and Masahiro Inaba in the Tokyo office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Japan.

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Kazakhstan

1. Overview

Kazakhstan has a less developed securities market compared to that of the US, UK or other Western states. The securities and public M&A legislation in Kazakhstan is still developing and in some cases uncertain.

There have only been a few M&A transactions in the market in recent years. The M&A market was affected by the economic slowdown sparked by falling oil prices, the COVID-19 pandemic and geopolitical uncertainty surrounding the Russian economy.

Kazakhstan's stock exchange ("**KASE**") was established in December 1993. There are 271 companies listed on the KASE. These are mostly financial organizations such as banks and insurance companies or state companies that are owned by a controlling-interest investor or the government.

In addition, in 2018, the newly created Astana International Financial Center ("**AIFC**") started operating in Kazakhstan. The AIFC is essentially a free financial zone situated in Nur-Sultan, Kazakhstan's capital, having its own English-law based regulatory framework. The AIFC has its own stock exchange, the Astana International Exchange ("**AIX**"). There are 148 companies listed on the AIX.

The summary set forth below is based on the laws of Kazakhstan, excluding the laws and regulations of the AIFC and AIX.

2. General Legal Framework

2.1 Main Legal Framework

There is no unified takeover code in Kazakhstan. Regulations concerning the acquisition of companies whose shares are listed on a stock exchange can be found in several laws and regulations, including the following:

- the Law of the Republic of Kazakhstan on Securities Market, dated 2 July 2003;
- the Law of the Republic of Kazakhstan on Joint Stock Companies, dated 13 May 2003;
- the rules relating to insider dealing and market manipulation;
- the rules relating to disclosure and transparency of listed companies;
- the rules of the KASE and the AIX relating to securities trading on a stock exchange; and
- the rules regarding merger control. These rules are not further discussed herein.

The rules and regulations that contain provisions on the acquisition of public companies are discussed below.

The Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market ("**Agency**") is the principal securities regulator in Kazakhstan. The Agency has certain legal tools that it can use to supervise and enforce compliance with the relevant rules, including imposition of administrative fines. In certain aggravated cases, criminal liability may be imposed by the court. Additionally, the court may invalidate a transaction that contravenes legal requirements.

As there is no unified regulation of public takeovers, the relevant laws and regulations do not expressly state the principles on which they are based, i.e., there is no formal set of regulated principles such as equivalent treatment of all shareholders found in certain other jurisdictions.

2.2 Foreign investments

Kazakhstani law imposes certain limited foreign ownership restrictions that apply to companies operating in particular industries. Thus, for example, Kazakhstan's Law on National Security restricts foreign ownership in certain Kazakhstani telecom service providers. Namely, foreign individuals and legal entities are prohibited from managing and/or operating any trunk lines in Kazakhstan without setting up a legal entity in Kazakhstan. Similarly, foreign entities are prohibited from owning, directly or indirectly, 20% or more of the shares in Kazakhstani mass media companies.

Any acquisition of 10% of the voting shares in a Kazakhstani bank requires prior approval by the Agency. Foreign shareholders holding 10% or more of a bank's shares must meet a required minimum rating. Companies established in certain listed jurisdictions, e.g., the British Virgin Islands, are prohibited from owning any shares in Kazakhstani banks. Similar restrictions apply to certain other regulated Kazakhstani financial institutions, such as insurance/reinsurance firms and investment portfolio managers.

Restricted/sensitive activities also include activities operated by a company included in the list of "strategic objects" approved by the Government of Kazakhstan, as well as gas, hydrocarbons and other sources of energy. As a result, acquisition of shares in such companies operating in such areas is subject to prior Government consent requirements.

Different types of entities are subject to their own set of rules governing the process and timing for obtaining the required government consent.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding in a Kazakhstani listed company.

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to receive dividends. • The right to obtain information about the company and its operations, including a copy of financial statements of the company. • The right to obtain excerpts from the Central Securities Depository (or nominee holder) to confirm its ownership right to securities. • The right to submit at the general shareholders' meetings nominees for election to the board of directors of the company.

Shareholding	Rights
	• The right to request invalidation of decisions of the general shareholders' meetings, board of directors and executive body for irregularities as to form, process or other reasons. • The right to submit questions to the company and receive a response within 30 days. • The right to receive pro rata share of assets of the company upon its liquidation. • The pre-emptive right to purchase the newly issued shares of the company and other securities convertible into shares of the company. • The right to vote at the general shareholders' meetings regarding changing the number or type of shares.
5%	• The right to put additional items on the agenda of a general shareholders' meeting. • The right to file a liability claim against the directors for irregularities as to entering into large transactions and related party transactions. • The right to file a liability claim seeking invalidation of a related party transaction if the value of the transaction is equal to or greater than 10% of the balance value of the company's assets where the court determines that there has been a fraud by an officer of the company or where the value of the assets acquired/disposed of by the company is not comparable with the market value as determined by a Kazakhstani licensed appraiser. • The right to obtain information about annual remuneration of each particular member of the board of directors or management board of the company if both (i) the court determines that such member of the board of directors/management board deliberately mislead the company's shareholders with a view to unlawfully receive income from the company for itself or its affiliated entities, and (ii) it is proven that actions in bad faith of such member of the board of directors/management board resulted in loss for the company.
10%	• The right to request the board of directors to convene an extraordinary general shareholders' meeting or, if the board of directors refuses to convene an extraordinary meeting, to apply to the court seeking an order to convene such meeting. • The right to request the convening of a board of directors' meeting.

Shareholding	Rights
	• The right to conduct an audit of the company (at its own expense).
More than 25%	The ability at a general shareholders' meeting to block: • the approval of the code of corporate governance and changes thereto; • the voluntary reorganization (merger, de-merger, etc.) or liquidation of the company; • the authorization to increase the company's share capital or to change the class of the company's authorized shares to another class; and • the amendment of the methodology of valuation of shares used in case of the company's buyback of shares on a non-organized securities market.
More than 50%	The ability at a general shareholders' meeting: • to amend the charter (by-laws) of the company; • to determine the terms and process of securities conversion; • to authorize the issuance of securities convertible into equity; • to approve the exchange of issued and outstanding shares to another class of shares and determine the terms and process of such share exchange; • to appoint and dismiss members of the counting commission; • to appoint and dismiss directors and to approve the remuneration and compensation of costs of directors; • to appoint statutory auditors; • to approve the annual financial statements; • to approve dividend distribution and determine the amount of dividends per one voting share; • to take decisions on voluntary share delisting; • to approve acquisitions or disposals of shares (participatory interest) in legal entities if the value of transaction represents at least 25% of the value of the company; • to determine the form of a notice to shareholders to convene a general shareholders' meeting and authorize publication of such information in mass media; • to approve an agenda of a general shareholders' meeting;

Shareholding	Rights
	• to determine the process of disclosure of information about the company to the company's shareholders; • to approve the issuance and annulment of a "golden share"; • to approve a large transaction for disposal of property with a value of 50% or more of the value of the company; and • to take decisions on other matters referred to the competence of the general shareholders' meeting as a matter of law or the charter (by-laws) of the company.

3.2 Insider dealing and market abuse

Kazakhstani law prohibits a person who has "inside information" from dealing with securities listed on a stock exchange. "Inside information" is defined broadly to include information that:

- is not known to third parties; and
- is capable of affecting the price of securities and financial instruments, if disclosed.

There are certain limited exceptions from this definition. In particular, the following information is not considered to be inside information:

- information based on publicly available data, including research data, forecasts and price appraisals, prepared with the purpose of making an investment decision or recommendation concerning a securities transaction;
- information received from mass media;
- unreliable information from unknown sources disseminated among a wide range of persons; and
- assumptions about the current or planned activities of the company.

The company is required to announce inside information immediately. In general, this means within a term ranging from three business days to 15 calendar days, depending on the type of information.

Kazakhstani law prohibits "market manipulation", which is defined as conducting actions aimed at:

- setting or maintaining prices at a level deviating from the level that would have prevailed as a result of free and fair operation of the market; or
- creating an artificial or false appearance of securities trading.

Disseminating false or misleading market information and exerting direct or indirect pressure on other market participants with the purpose of changing their market behavior is also prohibited.

Failure to comply with the above legal restrictions is an administrative and criminal offense in Kazakhstan. In addition, such a failure may lead to invalidation of the relevant securities transaction by a court in Kazakhstan.

3.3 Due diligence

Kazakhstani law does not contain any specific rules on whether and how a prior due diligence with respect to a publicly listed target company can be organized. Accordingly, there are no restrictions prohibiting a target company from allowing a bidder to obtain more information about it through a due diligence process.

However, if the bidder becomes aware of inside information, the target company should announce such information before the bidder proceeds with the acquisition of the company. If there are several bidders intending to place a bid, the relevant information should be provided to all of them.

3.4 Disclosure of shareholdings

A bidder that intends (acting alone or with its affiliates) to acquire 30% or more of the voting shares of a company in the secondary market must send a prior written notice to the target company. The notice must disclose information about the number of shares to be acquired and the purchase price for such shares.

Following the acquisition, the bidder must make a mandatory tender offer to other shareholders to buy their shares.

A bidder that acquires 10% or more of the voting shares of a company becomes affiliated with the company for the purposes of Kazakhstani law. As such, the bidder must periodically disclose information about itself and its affiliates to the company. The relevant information will then be published in the mainstream media, i.e., on the company's website and the website of the financial reporting depository.

3.5 Disclosures by the target company

As previously mentioned, a publicly listed company must immediately disclose inside information. "Inside information" is defined broadly and there is no exhaustive list of information that constitutes "inside information". Therefore, determination of whether or not the facts surrounding an intended acquisition of a company is "inside information" should be made on a case-by-case basis after careful consideration of all the relevant circumstances. If the relevant information constitutes inside information, then the company should announce this.

In addition, a publicly listed company is subject to general reporting and disclosure requirements under Kazakhstani law. For example, the company is required to publish on the website of the Depository of Financial Statements (www.dfo.kz) certain information, including:

- corporate events, including resolutions adopted by the board of directors and shareholders' meeting;
- information on the total / aggregate remuneration paid to the members of the company's management board in the preceding year;
- a list of the company's affiliated entities;
- changes in the company's shareholding structure where such changes affect the shareholders owning 10% or more of voting shares;
- the company's annual financial statements along with an auditor's report;
- methodology of valuation of shares when the shares are bought back by the company off exchange (OTC);
- changes in the list of companies in which the company has 10% or more of shareholding interest; and

- changes introduced to the company's securities prospectus.

The following information must be regularly supplied to the KASE:

- the company's annual financial statements for each completed financial year;
- audit reports relating to the company's annual financial statements;
- interim financial statements for each completed quarter of the current financial year;
- information on the shares and the company's shareholders, including information on the number of authorized shares, number of issued and outstanding shares, number of shares which are encumbered and/or blocked, number of shares which are bought back by the company, entities who hold 5% or more of the company's shares, etc.;
- information on the company's affiliated persons; and
- the company's insider list with the specification of persons who have access to inside information.

Any significant information which can affect the company, the price of its securities or the interests of investors must be disclosed to the KASE. Such information includes but is not limited to:

- information on changes in the structure of the company's management bodies;
- information on claims filed against the company with a value equal to or greater than 10% of the company's assets;
- information on the performance of financial obligations in the amount of 10% or more of the company's assets;
- information on intended new issues of the company's securities;
- information on the intention of the company to sell or place its shares constituting 5% or more of the total number of the company's issued and outstanding shares;
- information on the intention of the company to buy back its own voting shares constituting 5% or more of the total number of the company's issued and outstanding shares;
- information on the intention of the company to enter into a (i) major transaction or (ii) transaction in which the company has an interest which involves disposal or acquisition of assets with a value equal to or greater than 10% of the total balance value of the company's assets;
- information on the admission of the company's securities for circulation on markets outside Kazakhstan (issuance and placement of ADRs, GDRs, Eurobonds, etc.); and
- information on awarding a rating to the company or its securities, and information on the revocation of such rating.

The AIX regulations also require a listed company to make ongoing disclosures of important events such as:

- information an annual shareholder meetings;
- appointment of new directors;
- significant transactions;

- related party transactions;
- distributions of dividends;
- proposed new share issuances and redemptions;
- annual report; and
- material claims.

3.6 Mandatory tender offer

The mandatory tender offer rule is triggered if a bidder (acting alone or together with its affiliates) has acquired 30% or more voting shares of a company in the secondary market. In such event, the bidder must make a mandatory tender offer to the remaining shareholders (the offer must be made within 15 business days of acquisition).

The bidder's offer cannot be conditional and the price of the offer must not be less than the market price.

If the company's existing shareholders accept the offer, the bidder must pay for the shares offered by such existing shareholders within 30 business days after the shareholders accept the offer. Any failure by the bidder to make such an offer will result in the bidder being obligated to reduce its shareholding to not more than 29%.

The mandatory tender offer extends to foreign investors.

3.7 Minority shareholders' rights

Kazakhstani law contains the following protections for the minority shareholders' rights:

- shareholders holding, alone or together, 5% of the company's shares have the right to sue directors and managers of the company for mismanagement of the company;
- if the company's general shareholders' meeting takes a decision to delist the company's shares, a shareholder who voted against delisting or who did not participate in the general meeting has the right to require the company to buy back their shares (the buyback is subject to certain restrictions);
- if the company's board of directors' or general shareholders' meeting takes a decision on the company entering into an interested party transaction or a major transaction, a shareholder who does not agree with such decision has the right to require the company to buy back their shares (the buyback is subject to certain restrictions); and
- cumulative voting for the election of the members of the board of directors.

4. Effecting a Takeover

A takeover in Kazakhstan may be conducted by way of a tender offer. As was previously mentioned, there is no takeover code in Kazakhstan. Thus, many issues arising in connection with a takeover are not specifically regulated under Kazakhstani law.

For example:

- there is no definition of the term "control" for the purposes of takeover deals;
- there are no rules as to how and when a bid must be made public;

- there is no requirement to prepare a prospectus or submit it to the Agency (or any other authority) for approval;
- the bidder, in principle, is free to determine the price and form of consideration. The offered consideration may be paid in cash, securities or a combination of both. However, where a bidder makes a mandatory tender offer, the price of the tender bid must be no less than the market price;
- the bidder is free to make the bid subject to conditions precedent, including a minimum acceptance level, and regulatory and corporate authorizations. However, where a bidder makes a mandatory tender offer, the bid must be unconditional;
- there are no creeper rules; and
- there are no concepts of recommended and hostile offers or tender offers.

The bidder may effect the acquisition on a stock exchange or outside of a stock exchange. Where the deal is effected outside of a stock exchange, the above issues may be determined by the bidder on its own (based on its agreement with the shareholders) as there are no specific legal restrictions.

Where the transaction is settled through a stock exchange, the rules of the relevant stock exchange will apply.

Under Kazakhstani law, there is no concept of a "fiduciary duty." Thus, a majority shareholder does not owe any particular duties to the minority shareholders in terms of abuse of its dominant position.

5. Timeline

As a general rule, an acquisition of a publicly listed company can take between six months and one year in Kazakhstan. In particular, the preparatory stage, including due diligence and negotiations, is a lengthy process and may take several months. Obtaining the regulatory approvals required for the acquisition, such as merger control approval, can also be time-consuming in practice.

6. Takeover Tactics

There are no specific rules on takeover tactics. This includes maintaining secrecy until the bid is made or anti-takeover defense mechanisms.

See 3.2 and 3.3 above for market abuse and due diligence rules.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Kazakhstani law allows a shareholder acquiring (alone or with its affiliates) at least 95% of the voting shares in a company to gain ownership of the remaining shares in that company. In such case, the majority shareholder is entitled to force minority shareholders to sell their shares at a market price. The majority shareholder is entitled to exercise such right within 60 business days of acquisition.

Minority shareholders must sell (and transfer) their shares within 60 calendar days of the publication of a respective "squeeze-out" notice on the website of the Depository of Financial Statements. The share transfer will need to be registered in the books of the Central Securities Depository (or the nominee holder) in order to be effective; the law states that such registration can be effected based upon a "buy order" from the majority shareholder, without the need for the seller's "sell order."

The squeeze-out extends to foreign investors. However, it does not extend to certain state-controlled companies, i.e., the sovereign wealth fund "Samruk-Kazyna" and its group companies. It is unclear in what particular cases the exemption applies, i.e., when Samruk-Kazyna group companies acquire shares in a target company versus when an investor acquires a majority stake in Samruk-Kazyna group companies.

8. Delisting

A company can be delisted based upon a resolution of the general shareholders' meeting. The resolution is taken by a simple majority of votes of the shareholders, provided that no less than 50% of the shareholders attend the meeting. Delisting from the KASE requires approval from the KASE or AIX.

9. Contacts within Baker McKenzie

Azamat Kuatbekov and Igor Kolupayev in the Almaty office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Kazakhstan.

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Luxembourg

1. Overview

The following M&A transactions have been conducted in Luxembourg in the past few years:

- A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2024 to launch a takeover bid for the shares of SMG Technology Acceleration SE in the context of the of the business combination between SMG Technology Acceleration SE and BigRep GmbH.
- A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of 468 SPAC II SE in the context of the business combination between 468 SPAC II SE and Marley Spoon SE
- A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of GFJ ESG Acquisition I SE in the context of the business combination between GFJ ESG Acquisition I SE and learnd Limited.
- A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of Odyssey Acquisition S.A. in the context of the business combination between Odyssey Acquisition S.A. and BenevolentAI Limited.
- A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2022 to launch a takeover bid for the shares of Lakestar SPAC I SE in the context of the acquisition of HomeToGo GmbH by Lakestar SPAC I SE.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Luxembourg law relating to public takeover bids can be found in the Law of 19 May 2006, as amended, on takeover bids.

The Law of 19 May 2006 on takeover bids applies only to shares listed on the regulated market of the Luxembourg Stock Exchange ("**LSE**") and Luxembourg issuers of shares listed on a regulated market operating in the European Economic Area (EEA). The law does not apply to takeover bids launched for shares of open-ended undertakings for collective investment operating on the principle of risk spreading. It does not apply to takeover bids for securities issued by the Member State's central banks.

The main body of the Luxembourg takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the EEA. Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, relevant differences remain in the national rules of the individual Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Luxembourg, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, transposed in Luxembourg in the Law of 11 January 2008. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are based on Regulation (EU) No 596/2014 of 16 April 2014 on market abuse transposed in Luxembourg in the Law of 23 December 2016. For further information, see 6.3 below.

(c) The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. The rules are based on Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the offering document to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC and related EU legislation.

(d) The law of 21 July 2012 on squeeze-outs and sell-outs of securities of Luxembourg companies admitted or formerly admitted to trading on a regulated market, or which have been the object of a public offer.

(e) The general rules on the supervision and control of the financial markets.

(f) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

(g) The rules and regulations regarding the *Commission de Surveillance du Secteur Financier* ("**CSSF**").

(h) The rules and regulations regarding commercial companies, such as the law of 10 August 1915 on commercial companies, as amended.

(i) The rules and regulations regarding companies listed on the LSE, such as the law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, implementing Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies.

2.3 Supervision and enforcement by the CSSF

Public takeover bids are subject to the supervision and control of the CSSF. The CSSF is the principal securities regulator in Luxembourg.

The CSSF has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in case of non-compliance.

The CSSF also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

The CSSF is competent to supervise a bid if the offeree company has its registered office in Luxembourg and if the securities of that company are admitted to trading on the regulated market operated by the LSE. If the offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading. In respect of governing law and competent authorities, matters relating to the consideration offered in the case of a bid for all the remaining shares in the company, particularly the price, matters relating to the bid procedure, the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the EEA Member State of the regulated market where the shares are listed. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, the percentage of voting rights which confer control and any derogation from the obligation to launch a bid for all the remaining shares in the company, the applicable rules and the competent authority shall be those of the EEA Member State in which the offeree company has its registered office.

In addition, in accordance with Article 2 (2) of the law of 23 December 1998, as amended, establishing a financial sector supervisory commission, the CSSF is the competent authority for the supervision of the LSE. As a result of this provision, the CSSF has authority to review the information memorandum relating to the acquisition of all or part of the shares of a company incorporated in a non-EU member state and admitted to trading on the LSE.

2.4 Foreign investments

Foreign investments are not restricted in Luxembourg. Unless in the context of specific industries and sectors, takeovers are not subject to prior governmental or regulatory approvals.

2.5 General principles

The following general principles apply to public takeovers in Luxembourg. These rules are based on the Takeover Directive:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that he/ she can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Luxembourg listed public limited liability company (*société anonyme*) whose shares are admitted to trading on a regulated market operating in the EEA:

Shareholding	Rights
One ordinary share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors at general shareholders' meetings on subjects already on the agenda (10% shareholding required if the shares of the company are not admitted to trading on a regulated market operating in the EEA).
5%	The right to put additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda (10% shareholding required if the shares of the company are not admitted to trading on a regulated market operating in the EEA).
10%	• The right to request the board of directors to convene a general shareholders' meeting. • The right to request the board of directors to postpone a general shareholders' meeting that has commenced.
25% (at a general shareholders' meeting)	The ability to require the dissolution of the company if the ratio of the company's statutory net equity to the company's share capital has dropped below 25%.
More than 25% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block: • any changes to the articles of association, mergers, de-mergers, capital increases, capital reductions and dissolution of the company; • the authorization of the board of directors to increase the company's share capital without further shareholder approval (the so-called authorized capital); and • the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or warrants.

Shareholding	Rights
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting: • to appoint and dismiss directors and to approve their remuneration; • to appoint and dismiss statutory auditors and to approve their remuneration; • to approve the annual financial statements; • to grant discharge from liability to the directors and statutory auditor for the performance of their mandate; and • to take decisions for which no special majority is required (see, among other things, 1-6 above).
95%	The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**").

3.2 Restrictions and careful planning

Luxembourg law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, amongst other things, that manipulation of the target's stock price, e.g. by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company, other than in relation to the actual takeover bid, from launching a takeover bid.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure thresholds in Luxembourg are 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 2/3%. Several listed companies have also opted in their articles of association to apply a lower threshold than the initial threshold of 5% for consistency with the market practice of the jurisdiction where the shares are listed.

When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements (such as call option agreements).

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

3.6 Announcements of a public takeover bid

Prior to the public announcement of the takeover bid to the CSSF (see 6.2), no one is permitted to announce the launching of a public takeover bid. This prohibition not only applies to a bidder, but also to the target company, even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.5.

A bidder that intends to announce a public takeover bid must first inform the competent securities market authority, i.e., the CSSF if the shares are listed on the regulated market of the LSE, of its intention and then make the announcement. In addition, the bidder will at that time have to make the necessary filings for the actual launching of a public takeover bid, since as soon as the public takeover bid is announced, it can normally no longer be withdrawn, except in certain circumstances.

If there are rumors or leaks that a (potential) bidder intends to launch a public takeover bid, the CSSF could ask for more information on the bidder's intent. See 3.7 for more information. This could lead to an early disclosure, and possibly an acceleration of the preparations by a bidder, as it could be forced by the CSSF to make an announcement as to its intentions.

3.7 Early disclosures – Put-up or shut-up

(a) Early disclosure demanded by the CSSF – Whenever required for the good functioning of the markets, the CSSF may request that a person that could be involved in a possible public takeover bid make an announcement without delay or, if the latter person does not make such disclosure, to make the announcement itself. This type of disclosure is often made when the takeover bid cannot yet be formally launched, e.g., for practical purposes or due to merger control, but an announcement is nevertheless appropriate.

(b) Put-up or shut-up – Luxembourg law does not provide an express "Put-up or shut-up" mechanism to force a person to make an announcement regarding whether or not it intends to carry out a public takeover bid. However, under the general supervisory powers of the CSSF and transparency laws, the CSSF could require that the potential bidder disclose its intentions.

3.8 Due diligence

The Luxembourg public takeover bid law does not contain specific rules regarding the question of whether or not a prior due diligence can be organized, or how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted in the market and also by the CSSF. Appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

3.9 Acting in concert

For the purpose of the Luxembourg takeover bid rules, persons "act in concert":

- if they collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring control over the target company, frustrating the success of a takeover bid or maintaining control over the target company;
- if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy *vis-à-vis* the target company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. For example, this is the case when a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise when determining whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities, as a result of which the group in the aggregate would pass the 33 1/3% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 33 1/3% threshold.

4. Effecting a Takeover

There are three main forms of takeover bids in Luxembourg:

- a voluntary takeover bid, in which a bidder voluntarily makes an offer for all the voting securities issued by the target company (and securities issued by the company conferring the right to acquire voting securities of the target company);
- a mandatory takeover bid, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of 33 1/3% of the voting securities of the target; and
- a squeeze-out bid, in which a shareholder who already holds 95% of the voting securities can squeeze out the remaining holders of voting securities. This can be combined with a voluntary or mandatory takeover bid.

4.1 Voluntary public takeover bid

- The bidder is free to make the takeover bid subject to merger control clearance and, subject to prior approval by the CSSF, certain other conditions precedent, such as a minimum acceptance level, a material adverse change condition or a war clause.
- The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):
- The offered price may be paid in cash, securities or a combination of both.

- There is no minimum price for a voluntary takeover bid, but the legal rules provide that the terms of the takeover bid, including the price, must be such that they could reasonably be expected to allow the takeover bid to succeed.
- If there are different categories of securities, different prices per category can only be due to the characteristics of such categories.
- If, during the takeover bid period (starting on the date of the formal offer notice to the CSSF), the bidder or persons acting in concert with the bidder acquire or commit to acquire securities to which the takeover bid relates at a higher price, then the offered price must be raised to that higher price.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting on their account), as a result of an acquisition of voting securities, directly or indirectly holds more than 33 1/3% of the (actual outstanding) voting securities of the Luxembourg target company.
- The mandatory takeover bid is unconditional.
- The main exceptions to the takeover bid obligation include the situations where the stake of more than 33 1/3% is acquired as a result of a voluntary takeover bid. Luxembourg law does not expressly provide other exemptions. Any other exemption is subject to the prior approval of the CSSF. According to publicly available information, the CSSF has granted exemptions in the following circumstances:
- the person(s) who ultimately control(s) the Luxembourg target company do(es) not change;
- subscription of shares by underwriters in connection with a secondary offering of shares of a listed company;
- with respect to the control over special acquisition purpose companies where the interests of the minority shareholders are sufficiently protected, taking into account the transparency of the acquisition operation and the relating arrangements, the ensuing possibility for shareholders to act knowingly, the provisions regarding the related voting procedures and the possibility of an unlimited de facto exit for the shareholders.
- In terms of the price offered and the form of the consideration, the same rules apply as in case of a voluntary takeover bid. In addition:
- The mandatory offer price must at least equal the highest price paid by the bidder (or any person acting in concert with it) during a period of 12 months preceding the announcement of the takeover bid.
- The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered (in an amount corresponding to the cash value of the consideration securities at the time of the filing of the takeover bid with the CSSF) if (i) the consideration does not consist of liquid securities that are admitted to trading on a regulated market in Luxembourg or elsewhere in the EEA, or (ii) during a term of 12 months prior to the announcement of the mandatory public takeover bid or during the takeover bid period, the bidder (or a person acting in concert) acquired securities in consideration of a payment in cash (or agreed to make such cash payment) to which at least 5% of the voting rights in the target company are attached.
- The CSSF has the power to allow or require an amendment of the price.

4.3 Follow-on squeeze-out and sell-out right

- Follow-on squeeze-out – a bidder will be able to squeeze out the residual minority shareholders at the end of the takeover bid if it holds, alone or in concert with others, 95% of the voting securities of the target, and can exercise 95% of the voting rights.
- Follow-on sell-out right – minority shareholders have a sell-out right if, at the end of the takeover bid (or of its reopening), the bidder holds, alone or in concert with others, 90% of the voting rights of the target.

5. Timeline

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under Luxembourg law with respect to Luxembourg companies whose shares are listed on the regulated market of the LSE. In other circumstances, for example when the shares of the Luxembourg company are only listed on an EEA regulated market operating outside Luxembourg, the CSSF will share jurisdiction with the securities market authority of another EEA Member State and the process described below will change.

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft offering document). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2.	Disclosing the decision of the bidder to launch a bid: • The bidder gives notice of its decision to launch the bid to the CSSF and then discloses its decision to the public. • Within 10 business days, the bidder files the bid with the CSSF. The filing must contain, amongst other elements, proof of certain funds to pay the offer price and a draft offering document. • Within 10 business days, the CSSF requests additional information (see 3. below). As of that moment, the offering document is public and the bidder can no longer withdraw the bid (except in certain limited circumstances, such as in the event of a counter-bid or certain defensive actions by the target company) and the powers of the board of the target company are limited. • Counter-bids and higher bids can be filed.
3.	Review and approval of the bidder's offering document by the CSSF within 30 business days. Consult with and provide information to employees, in parallel.

Step	
4.	Response memorandum by the target's board: • In practice, the target's board will involve the works council. If the board has timely received the position of the works council, this must be attached to the response memorandum. • Following approval of the offering document by the CSSF, the board shall promptly issue its response memorandum.
5.	Publication of the offering document after approval of the CSSF.
6.	Launch of the acceptance period: • Start: Immediately after the publication of the offering document, at the earliest. • Duration: Not less than two weeks and not more than 10 weeks. • The CSSF may grant a derogation in order to allow the bidder to call a general meeting of the shareholders to consider the bid. Where the bidder acquires control of the target company, the shareholders that did not accept the bid until the closing of the acceptance period have the opportunity to accept this bid within fifteen days.
7.	Publication of results and, when relevant, whether or not the bidder waives the conditions precedent to the bid (as soon as practicable after the end of the acceptance period).
8.	Payment of the offered consideration by the bidder (in accordance with the terms described in the offering document).
9.	Sell-out period if the bidder acquired 90% of the shares within three months following the expiry of the acceptance period of the bid.
10.	Squeeze-out period if the bidder acquired 95% of the shares. Squeeze-out option to be exercised within three months following the expiry of the acceptance period of the bid.
11.	Publication of results of the squeeze-out/sell-out (as soon as practicable at the end of additional three-month period).
12.	Payment of the offered consideration by the bidder (in accordance with the terms described in the offering document).

Set out below is an overview of the main steps for a voluntary public takeover in Luxembourg.

Voluntary public takeover (indicative timeline)

Start process

A Day

Launch of the bid. Bidder:

- notifies *Commission de Surveillance du Secteur Financier* (CSSF); and
- discloses bid to the public (after notifying CSSF)

A + 10 business days

Bidder submits draft offer document to the CSSF

A + 40 business days

- Approval of bidder's offering document by the CSSF
- Publication of the offering document
- Target board issues response memorandum
- Start of acceptance period

A + 6 months

- End of acceptance period (after no less than 2 weeks and no more than 10 weeks)
- Publication of results

A + 9 months

- End of sell-out period; or
- End of squeeze-out period

A + 12 months

- Payment of the offered consideration by the bidder
- Publication of results of squeeze-out/sell-out

Review by the CSSF within 30 business days

Within 3 months

Within 3 months

6. Takeover Tactics

6.1 Inside information

A Luxembourg company whose shares are admitted to trading on a regulated market has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public.

- "*Inside information*" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "*precise nature*" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "*Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments*" shall mean information that a reasonable investor would be likely to use as part of the basis of his/her investment decisions.

It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise and a large grey area will exist as to whether certain events will need to be disclosed or not.

6.2 In the event of a public takeover bid

The Luxembourg takeover bid rules provide that no announcement can be made of a potential takeover bid unless prior notice has been given to the CSSF.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Luxembourg law is set forth in Regulation (EU) No 596/2014 of 16 April 2014 on Market Abuse (supplementing, as of 3 July 2016, the law of 9 May 2006 on market abuse, as amended). The same regulation applies in the other jurisdictions of the EEA.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

The implementation of anti-takeover defense mechanisms is subject to the prior approval of the general meeting of shareholders, if the articles of association of the target company require such approval.

Mechanism	Assessment and considerations
1. Capital increase Capital increase by the board (authorized capital) without preferential subscription rights of the shareholders.	• Requires an express authorization in the articles of association by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting). • The authorization is valid for up to 5 years but can be renewed.
2. Share buyback Share buyback "with a view to avoid imminent and serious harm" to the company.	• A share buyback that is not done "with a view to avoid imminent and serious harm" requires an express authorization from the general shareholders' meeting (no quorum and simple majority of votes cast). • The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves. • Buybacks to be made in compliance with corporate transparency and market (abuse) rules.
3. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for, the company, which is triggered by a change in control or the launch of a takeover bid.	• Even though it is not expressly required by Luxembourg law, if the transaction results in a change in fact of the purpose of the company, prior approval by the general shareholders' meeting, by a majority of two-thirds of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented, is required (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).
4. Warrants on new shares Warrants are issued prior to the takeover bid in favor of "friendly person(s)" (without preferential subscription rights of the shareholders) who can exercise the warrants at their option and subscribe for new shares.	• Requires only a decision of the target company's board if the authorized capital permits the issuance of warrants as takeover defense. Prior approval, by a majority of two-thirds of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented, is required (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).

Mechanism	Assessment and considerations
5. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• Only transactions that have sufficiently progressed already (prior to receipt of notification of a takeover bid) may be implemented by the target's board. • Other transactions require shareholders' approval after the takeover bid has been notified to the target if it is required pursuant to the articles of association of the target company, provided such requirement has been approved by the general meeting of shareholders of the target company.
6. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• A voting undertaking is only valid if it is limited in time. • The shareholders could be considered as "acting in concert". If so, disclosure obligations apply and if they hold more than 33 1/3% of voting rights, any subsequent acquisition of shares will trigger an obligation to launch a takeover bid. • Assumes a stable shareholder base or reference shareholders.
7. Veto rights for certain shareholders Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms.	• Requires an express inclusion in the articles of association by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting). • Requires reference shareholder(s).
8. Limitations on share transfers Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders.	• Inclusion in the articles of association requires an approval by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting). • Limitations have to be, and must remain at all times, in the interest of the company and must be limited in time. • Prior approval clauses can only be invoked against a bidder provided that a refusal of

Mechanism	Assessment and considerations
	approval is motivated on the basis of a non-discriminating application of approval rules. • Shareholders could be considered as "acting in concert". If so, see "Shareholders' agreements" above. • Exceptional for listed companies (listed securities are in principle freely transferable; impact on share liquidity).
9. Multiple listings Listing of the shares on several stock exchanges.	• Should make the takeover more difficult, particularly if one or more of these markets is located outside of the EEA.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom he/she acts in concert) holds 95% of the share capital with voting rights and 95% of the voting securities, he/she can force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to the bidder at a fair price. The consideration offered in the takeover bid is presumed to be fair.

This type of summarized squeeze-out bid is not subject to the rules and procedures that would otherwise apply to a stand-alone squeeze-out procedure outside the framework of a voluntary or a mandatory public takeover bid.

In the event of a summarized squeeze-out, the takeover bid will be reopened at the squeeze-out price during the three months following the expiry of the acceptance period of the bid. Securities that are not tendered to the bidder at the expiry of the reopened bid are deemed to be automatically acquired by the bidder.

7.2 Sell-out

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom he/she acts in concert) holds 90% of the share capital with voting rights, the security holders that did not accept the takeover bid shall have the right to demand that the bidder acquires their voting securities and securities conferring the right to voting securities on the terms of the takeover bid. This right can be exercised by means of a registered letter with confirmation of receipt to the bidder (or the intermediary appointed by the bidder for this purpose) within a term of three months following the expiry of the acceptance period of the bid.

8. Delisting

To delist a Luxembourg company, a request must be made to the LSE. To make its decision, the board of the LSE takes into account the interests of the market, the investors and the issuer. The intention to delist the shares must be fully disclosed in any takeover bid document and must be discussed with the LSE in advance. Following the takeover bid, the target's board can decide to delist, after having notified the LSE.

The CSSF may oppose a delisting of a Luxembourg company that is listed on the LSE in the interest of protecting investors. In particular, the CSSF may oppose a delisting of a Luxembourg company (even if the company no longer has a relevant free float) if minority shareholders did not have the opportunity to sell their shares at a fair price.

9. Contacts within Baker McKenzie

Jean-François Findling is the most appropriate contact within Baker McKenzie for inquiries about public M&A in Luxembourg.

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Malaysia

1. Overview

The current M&A market in Malaysia is expected to accelerate, driven by macro-economic factors and strong foreign domestic investment ("**FDI**") into the Malaysian economy.

The current Malaysian Government has courted FDI from all corners and in particular, the US, China, Japan, the EU and the Middle East. Significant new investments have been secured from major companies particularly in the data center industry which forms another significant element of Malaysian participation in the high growth and transformational cloud computing and artificial intelligence sectors. The conclusion of negotiations on the Comprehensive Economic Partnership Agreement (CEPA) between Malaysia and the UAE in August 2024 is expected to attract new investments into Malaysia, as the CEPA aims to eliminate or reduce tariffs, lower trade barriers, and foster private-sector collaboration. It is expected that the hunger for FDI and the commitment to an open market for M&A activity and post-pandemic economic recovery continue to drive M&A interest in Malaysia in 2025.

Regional private equity houses are expected to continue to be key drivers of M&A, as foreign-currency denominated funds are well placed to take advantage of better valuations against the Ringgit.

In addition, the M&A market is also expected to benefit from the continuing corporate restructuring exercises and consolidation strategies as companies look to unlock value, hive off non-core assets and seek efficiencies.

2. General Legal Framework

2.1 Main legal framework

Malaysia's public takeover rules are modelled after those of the United Kingdom, Australia and Hong Kong, where the primary rules governing public takeover bids are found in a non-statutory code of conduct.

The main rules and principles of Malaysia law relating to public takeover bids can be found in:

(a) Malaysian Code on Take-Overs and Mergers 2016 ("**Code**") and the Rules on Take-Overs, Mergers and Compulsory Acquisitions 2016 ("**Rules**");

(b) Bursa Malaysia Securities Berhad ("**Bursa Malaysia**") Main Market Listing Requirements ("**Listing Requirements**");

(c) The Malaysian Companies Act 2016 ("**Companies Act**"); and

(d) The Capital Market and Services Act 2007 ("**CMSA**").

The Code and Rules apply to takeovers and mergers of:

(i) corporations, real estate investment trusts and business trusts with a primary listing of their equity securities and units on Bursa Malaysia; and

(ii) Malaysian unlisted public companies with more than 50 shareholders and net assets of RM15 million or more.

The Code and Rules apply whether the bidders are natural persons, corporations or unincorporated bodies, and whether resident in Malaysia or not.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Malaysia, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies – These rules are based on the Companies Act and CMSA. For further information, see also 3.4 below.

(b) The rules relating to insider dealing – These rules are found in the Listing Requirements and the CMSA. For further information, see also 3.3 below.

(c) The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market – These rules could be relevant to the extent the consideration that is offered in the public takeover bid consists of securities. These rules are found in the Listing Requirements and CMSA.

(d) Foreign investments regulation – There is no overriding legislation, policy or regulatory body imposing restrictions on foreign investment in Malaysia. However, foreign equity restrictions are imposed on a sectoral basis, in particular, strategic industries such as banking, insurance, aviation, energy and infrastructure, by the relevant industry regulator through the grant of and administration of operating licenses. Approval from such a regulator may be required in connection with a takeover offer. For example, the approval of Bank Negara Malaysia is required if a financial institution changes its shareholding by 5% or more. If a mandatory offer requires the approval of a sectoral regulator, the bidder must ensure that all the necessary approvals are obtained as soon as practicable before dispatching the offer document. If the necessary approvals cannot be obtained in time, an application can be made to the Securities Commission for an extension of time to dispatch the offer document.

2.3 Supervision and enforcement by regulatory bodies

Public takeover bids are subject to the supervision and control of the following regulatory authorities:

(a) Securities Commission – The Securities Commission administers and enforces the Code and the Rules. It has wide rule-making and enforcement powers, including regulating takeovers and mergers of companies; and ensuring compliance with the provisions of securities laws.

(b) Companies Commission of Malaysia ("**Companies Commission**") – The Companies Commission administers and enforces the Companies Act.

(c) Bursa Malaysia – Bursa Malaysia is the Malaysian stock exchange and supervises listed companies.

(d) Licensing authorities – Most industry sectors are regulated in Malaysia and require a license to conduct business.

2.4 General principles

The following general principles apply to public takeovers in Malaysia. These rules are based on the Code:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that they can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

(a) The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Malaysia-listed corporation:

Shareholding	Rights
5%	• Substantial shareholding level which requires the holder to disclose its substantial shareholding to the company, the Securities Commission and Bursa Malaysia. • Any change in interest and cessation of substantial shareholding is also required to be disclosed.
Over 10%	The holder may block compulsory acquisition.
Over 25%	The holder may block special resolutions of the company.
33%	Threshold for triggering a mandatory offer.
Over 50%	A mandatory offer ceases to be conditional.
75%	The holder can ensure special resolutions are passed.

3.2 Restrictions and careful planning

Malaysia law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is intended to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. The relevant provisions in the Code, CMSA and Listing Requirements prohibit an individual in possession of non-public material price-sensitive information from (a) communicating the information to a third party who is likely to deal in the securities or (b) dealing in the securities.

The rules include, among other things, that manipulation of the target company's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

Apart from the bidder or any person acting in concert ("**PAC**"), any other person who has confidential price-sensitive information about an actual or contemplated takeover bid is prohibited from dealing in the securities of the target company prior to the launch of a takeover offer.

For further information on the rules on insider dealing and market abuse, see also 6.3 below.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable threshold. The relevant disclosure threshold in Malaysia is 5%.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.8 below). These include its affiliates, financial or professional advisers and directors. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements, such as call option agreements or voting undertakings.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules require a company to immediately announce all inside information (for further information on inside information, see also 6.1 below). The facts surrounding the preparation of a (potential) public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. This could, for instance, be the case if the target company's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk that the public is misled, and that the company can keep the relevant information confidential. Where the target company is the subject of rumors or speculation about a possible bid, or there is significant movement in its share price or share turnover, the target company must immediately make an announcement.

3.6 Announcements of a public takeover bid

(a) Bidder's obligations

(i) Announcement of firm intention – A bidder who makes or triggers the obligation to undertake a takeover offer must immediately announce this via a press notice within one hour of incurring the obligation. The press notice must be published in at least three national daily newspapers. One public announcement must be published in Bahasa Malaysia (the national language of Malaysia) and another must be published in English. The bidder must also send written notice of the same to the:

- target's board or its designated advisor;
- Securities Commission; and
- Bursa Malaysia (if the bidder or the target is listed).

(ii) Triggering circumstances for a holding announcement – Before the target's board is approached, if there is an untoward movement or increase in the volume of share turnover of the target and there are reasonable grounds to conclude that the actions of the potential bidder have contributed to the situation, the potential bidder must make a brief announcement as to whether there is a takeover offer or a possible takeover offer. Such holding announcements are typically necessitated due to:

(A) Negotiations or discussions being extended to include more than a very restricted number of people (for example, when the bidder wishes to approach a wider group of people to arrange financing or to seek irrevocable commitments).

(B) Negotiations between a controlling shareholder and the bidder when:

(1) the bidder becomes the subject of rumors or speculations about a possible takeover offer before the bidder approaches the target's board;

(2) there is an unusual movement in the price of the target's voting shares or voting rights;

(3) there is a significant increase in the turnover volume of the voting shares or voting rights of the target; and

(4) there are reasonable grounds to conclude that the actions of the controlling shareholder have contributed to the situation.

(C) A sale and purchase agreement for the acquisition of voting shares or voting rights being signed, which will lead to the bidder triggering a mandatory offer obligation.

Following the holding announcement, the bidder must:

(A) Announce its firm intention to make a takeover offer or confirm that it will not be making a takeover offer within two months from its first preliminary announcement unless the Securities Commission has granted an extension of time under the Code. Once the bidder has made a takeover announcement, the bidder must proceed with the offer and cannot withdraw unless permission is obtained from the Securities Commission.

(B) Submit the offer document to the Securities Commission for its consent within four days of the date of announcement.

(C) Post the offer document (as approved by the Securities Commission) within 21 days of the date of announcement to the target's board and shareholders, and holders of convertible securities.

(iii) Restrictions – After announcing that it does not intend to make a takeover offer, the bidder (or PAC) cannot do any of the following for six months:

(A) Announce a takeover offer of the target.

(B) Acquire voting shares or voting rights which would trigger a mandatory offer obligation.

(C) Procure an irrevocable commitment to acquire shares of the target which would trigger a mandatory offer obligation.

(D) Make any statement which raises or confirms the possibility that a takeover offer may be made for the target.

(E) Take any steps in connection with a possible takeover offer for the target.

(b) Target's obligations

(i) Triggering circumstances for holding announcement – After being approached by the bidder, which may or may not lead to an offer, the primary responsibility for making a holding announcement as to whether there is a possible takeover offer will normally rest with the target's board. The target's board should also keep a close watch on its share price and volume of share turnover.

(ii) Additional triggering circumstances for a holding announcement – The target must also make an announcement when:

(A) The company is the subject of rumors and speculations, or is subject to unusual price movement or turnover volume of its voting shares or voting rights, whether or not there is a firm intention to make an offer.

(B) Negotiations or discussions of a possible takeover are extended to include more than a very restricted number of people.

(C) The target's board is aware that there are negotiations or discussions between a potential offeror and the holder(s) of more than 33% of the voting shares or voting rights of the target.

(D) The target's board approaches the bidder to acquire a controlling stake in the target and:

(1) the target becomes the subject of rumors and speculations about a possible takeover offer before the bidder makes an approach to the target's board;

        (2) there is unusual movement in the price of the target's voting shares;

        (3) there is a significant increase in the turnover volume of the target's voting shares; and

        (4) the number of bidders to be approached is to be increased to include more than a very restricted number of people.

    (iii) Announcement of firm intention – The target's board must, within one hour of receiving notice from the bidder, make an announcement to the public through a press notice or to Bursa Malaysia (if the company is listed). The announcement must also be sent to all of the target's shareholders within seven days of receiving the notice.

3.7 Due diligence

Due diligence in a takeover offer, whether hostile or recommended, is limited. This is due to a combination of insider trading laws (see 3.3 above) and the fact that a takeover offer cannot easily be withdrawn once announced. Due diligence is generally limited to information in the public domain.

Where a bidder plans to acquire a controlling block of shares in the target from a controlling shareholder, it can as part of that arrangement conduct due diligence enquiries on information relating to the target that is in the possession of that shareholder. In practice, the ability of the bidder to conduct due diligence on the target's records can be limited, as the other substantial shareholders of the target can resist. The target must give similar information to another bona fide potential bidder that makes a competing takeover offer, at that bidder's request (see 3.5 above).

The following information is in the public domain for a public-listed company:

(a) Information lodged at the Companies Commission, including:
    (i) the company's constitution; and
    (ii) corporate forms, such as the forms for the return of allotment of shares and notification of change in the register of directors, managers and secretaries.

(b) Information lodged pursuant to the Listing Requirements, including:
    (i) announcements;
    (ii) annual audited accounts;
    (iii) quarterly financial reports;
    (iv) circulars to shareholders;
    (v) annual reports; and
    (vi) prospectuses.

(c) Analysts' research reports, which may include information on the target's:
    (i) industry sector;
    (ii) potential earnings;
    (iii) future business prospects; and

(iv) expected price range for its shares.

3.8 Acting in concert

For the purpose of the Malaysia takeover bid rules, persons "act in concert" if:

(a) pursuant to an agreement, arrangement or understanding, they cooperate to acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or

(b) pursuant to an agreement, arrangement or understanding, they cooperate to act jointly or severally for the purpose of exercising control over a company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.

The concept of persons acting in concert is very broad, and in practice many issues can arise to determine whether persons act or do not act in concert. This is especially relevant in relation to mandatory general offers. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 33%-threshold, the members of the group will have a joint obligation to carry out a mandatory general offer, even though the individual group members do not pass the 33%-threshold.

4. Effecting a Takeover

4.1 Types of public takeover bid

The main methods of acquiring control of a public company in Malaysia are:

(a) Takeover offer – The shareholders of the target are asked to accept an offer that has been made by a bidder. This is the most common method of obtaining control. There are two types of offer:

  (i) Voluntary offer – This is where an offer is made voluntarily and simultaneously to all the shareholders of the target to acquire their shares in the target.

  (ii) Mandatory offer – This occurs when an acquirer is entitled to exercise control or meets certain takeover thresholds. Typically, the bidder signs a share purchase agreement to purchase a block of shares which, in turn, triggers the general requirement for an announcement.

(b) Scheme of arrangement – The company collaborates with the bidder for the bidder to take over the target. The target's shareholders will then vote on a takeover proposal put to them by the collaborating parties. The target's assets or shares are transferred to the bidder under a statutory court process (section 366, Companies Act) or other relevant applicable legislation. This method is commonly used by financial institutions and insurance companies to transfer obligations owed to account and policyholders. A scheme of arrangement is now included within the definition of a takeover under the Rules.

(c) Acquisition of assets and liabilities – The target sells its assets and liabilities to the bidder through an ordinary resolution of the target's shareholders (requiring an approval of over 50%, unless it is a major disposal or as otherwise set out in the company's constitution). This controversial method has led to certain public-listed entities being taken over and privatized.

4.2 Voluntary takeover offer

In a voluntary takeover, the offer document must include a condition that makes the takeover offer conditional on the bidder receiving acceptances that result in the bidder holding an aggregate of more than 50% of the target's voting shares. In computing the level of acceptances for a voluntary offer, the bidder must not aggregate the voting shares of its PAC unless such persons are joint offerors.

The bidder can set a higher acceptance threshold (but the threshold must be more than 50%). This is especially significant when the bidder wants to compulsorily acquire the voting shares from minority shareholders during the compulsory acquisition process.

In addition, the bidder cannot impose a condition the fulfilment of which depends on either:

(a) an event that is within the control or is a direct result of the bidder's or PAC's action; or

(b) the subjective interpretation or judgment of the bidder or its PAC.

If a voluntary offer is contemplated, a memorandum of understanding or undertaking should only be obtained, in limited circumstances, from key shareholders before making a takeover offer. This is because the mandatory general offer requirements are triggered by arrangements entered into by a bidder that would result in it holding more than 33% of the voting rights in a company. The Rules provide that a voluntary offer becomes a mandatory offer if the bidder or PAC acquires voting shares or voting rights (other than through acceptances) that trigger an obligation to make a mandatory offer.

Once a takeover offer has been announced, it is common for the bidder to seek undertakings from key shareholders to secure their acceptance of the offer. The requirement to make a public announcement is triggered in certain circumstances, including when a bidder intends to seek irrevocable commitments. In that case, the bidder must make the announcement. The offer document should disclose undertakings.

However, unless approved by the Securities Commission, the bidder or its PAC are not permitted to make arrangements with selected shareholders, if such arrangements have favorable conditions which are not being extended to all of the target's shareholders either:

(a) during a takeover offer;

(b) when a takeover offer is reasonably in the bidder's contemplation. This is a question of fact to be determined by the Securities Commission; or

(c) during the six-month period following the close of a takeover offer.

Note also that where the takeover offer is successful, there are also restrictions on the ability of an offeror to acquire further securities on more favorable terms than the previous takeover offer, within 6 months immediately after the close of the takeover offer.

4.3 Mandatory takeover offer

No condition can be attached to a mandatory offer other than the condition that the offer is subject to the bidder having received acceptances which would result in the bidder and its PAC holding in aggregate more than 50% of the target's voting shares (see 4.2 above). No other condition can be attached.

If the bidder has acquired, already holds or is entitled to acquire more than 50% of the target's voting shares when the offer is made, the offer shall be unconditional (unless approved by the Securities Commission).

The bidder must make a mandatory takeover offer for voting shares when the bidder (or PAC):

(a) Acquires, holds or exercises control of more than 33% or more of the target's voting shares (or is entitled to do so).

(b) Already holds between 33% and 50% of the target's voting shares and then acquires more than 2% of the target's voting shares in any six-month period.

(c) Acquires 33% or less of the target's voting shares and the Securities Commission exercises its discretion to trigger the mandatory general offer requirements. The mandatory general offer requirements are triggered in cases where despite the bidder and its PAC holding 33% or less of the target's voting shares, the Securities Commission has established that the bidder or PAC has, in fact, obtained control of the target (more than 33% of the target's voting shares). The Securities Commission can apply certain qualitative and quantitative tests to determine whether control has been obtained. The Securities Commission can also require confirmation from the bidder and target, the bidder's and target's boards and their respective advisers.

An exemption from the mandatory general offer requirements can also be obtained from the Securities Commission, depending on the circumstances of the case.

5. Timeline

As a general rule, the takeover bid process for a mandatory general offer is similar to the process that applies to a voluntary general offer, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary general offer process under the Code.

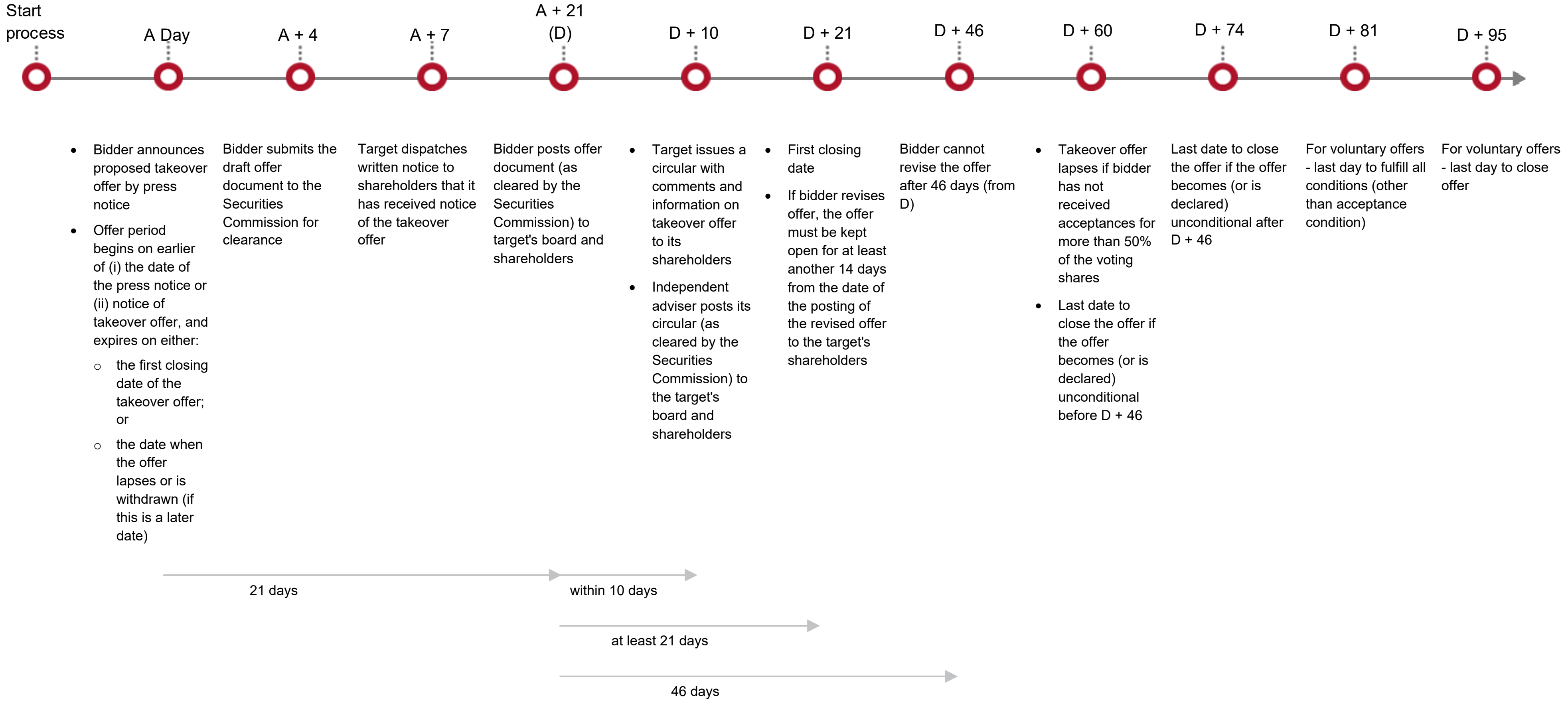
Step
1. Announcement day (T): • The bidder must immediately announce the proposed takeover offer by press notice, within one hour of incurring the obligation to make a takeover offer. • The bidder must also send written notice of the announcement to the target's board or its designated advisor, the Securities Commission and Bursa Malaysia (if the bidder or the target is listed). • The target's board must inform the public (by way of press notice) or Bursa Malaysia (if the target is listed) within one hour of receiving the written notice. • The offer period begins on the date of the press notice or notice of takeover offer (whichever is earlier) and expires on either: • the first closing date of the takeover offer; or • the date when the offer lapses or is withdrawn (if this is a later date).

Step	
2.	T plus 4: • The bidder submits the draft offer document to the Securities Commission for consent.
3.	T plus 7: • The target's board notifies all of the target's shareholders that it has received notice of the takeover offer.
4.	T plus 21: • The bidder posts the offer document (as consented to by the Securities Commission) to the target's board and shareholders ("**D**").
5.	D plus 10: • Within 10 days of posting the offer document, the target's board issues a circular with comments, opinions and information on the takeover offer to the target's shareholders. • The independent adviser posts its circular to the target's board and shareholders.
6.	D plus 21: • For at least 21 days from the posting of the offer document, the bidder must keep the takeover offer open. • If the bidder revises their offer, the offer must be kept open for at least another 14 days from the date of the posting of the revised offer to the target's shareholders. • The bidder must also make an announcement of the revised offer to the public by way of press notice and Bursa Malaysia (if the target is listed).
7.	D plus 46: • The bidder cannot revise the offer after 46 days from the date of posting of the offer document (if a competing bid is made during the offer period, the posting of the offer document is deemed to be the day on which the competing takeover offer document was posted).
8.	D plus 60: • Within 60 days of posting of the offer document, the takeover offer lapses if the bidder has not acquired more than 50% of the voting shares. • This is the last date to close the offer if the offer becomes (or is declared) unconditional due to acceptances (50% condition has been fulfilled) before D plus 46.

Step	
9.	D plus 74: • This is the last date to close the offer if the offer becomes or is declared unconditional as to acceptances after D plus 46.
10.	D plus 81: • For voluntary offers, this is the last day to fulfil all conditions attached to the offer (other than the acceptance condition).
11.	D plus 95 • For voluntary offers, this is the last day to close the offer.

Set out below is an overview of the main steps for a voluntary public takeover in Malaysia.

Voluntary public takeover (indicative timeline)



Start process	

A Day	- Bidder announces proposed takeover offer by press notice
	- Offer period begins on earlier of (i) the date of the press notice or (ii) notice of takeover offer, and expires on either:
	  ○ the first closing date of the takeover offer; or
	  ○ the date when the offer lapses or is withdrawn (if this is a later date)

A + 4	Bidder submits the draft offer document to the Securities Commission for clearance
A + 7	Target dispatches written notice to shareholders that it has received notice of the takeover offer
A + 21 (D)	Bidder posts offer document (as cleared by the Securities Commission) to target's board and shareholders
D + 10	- Target issues a circular with comments and information on takeover offer to its shareholders - Independent adviser posts its circular (as cleared by the Securities Commission) to the target's board and shareholders
D + 21	- First closing date - If bidder revises offer, the offer must be kept open for at least another 14 days from the date of the posting of the revised offer to the target's shareholders
D + 46	Bidder cannot revise the offer after 46 days (from D)
D + 60	- Takeover offer lapses if bidder has not received acceptances for more than 50% of the voting shares - Last date to close the offer if the offer becomes (or is declared) unconditional before D + 46
D + 74	Last date to close the offer if the offer becomes (or is declared) unconditional after D + 46
D + 81	For voluntary offers - last day to fulfill all conditions (other than acceptance condition)
D + 95	For voluntary offers - last day to close offer

21 days

within 10 days

at least 21 days

46 days

6. Takeover Tactics

6.1 Inside information

A person who is in possession of "inside information" that relates to any securities listed on Bursa Malaysia is prohibited from:

(a) acquiring or disposing, or entering into an agreement for or with a view to the acquisition or disposal of, such securities;

(b) procuring, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities; or

(c) communicating (directly or indirectly) the insider information to another person if it knows or ought reasonably to know that the other person would or would be likely to deal in those securities or procure a third person to deal in those securities.

This difficulty generally arises when a bidder is given the opportunity to conduct due diligence on the target company before a (potential) takeover bid is made. In the event that inside information is unearthed during due diligence, the same inside information should be disclosed to the public before a takeover bid is made. This will be in many circumstances a difficult exercise, and a large grey area will exist as to whether certain information constitutes inside information.

6.2 In the event of a public takeover bid

A bidder who makes or proposes a takeover offer must immediately make an announcement of its firm intention via a press notice. The press notice must be published in at least three national daily newspapers.

Before an approach has been made to the target company or following an approach to the target company, if the target company is the subject of rumor or speculation about a possible bid, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential bidder's actions which have directly contributed to the situation, a holding announcement is required to be made.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Malaysia law is set forth in the CMSA.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities. See 3.3 and 6.1 for more information.

6.4 Stake building

Although stake building is possible, a potential bidder should be aware that it will incur an obligation to publicly disclose its interests in the target when it holds 5% or more of the voting shares (and each change in percentage level thereafter). In addition, a mandatory general offer is triggered if a potential bidder acquires 33% or more of the securities of a public company. This obliges the potential bidder to make an offer for all the remaining securities at the highest price paid by it within six months of a mandatory general offer.

In addition, a stake building exercise will make it more difficult for a potential bidder to invoke the squeeze-out mechanism of minority shareholders, as shares acquired during stake building before launch of the takeover bid cannot be taken into account in determining if the squeeze-out threshold of 90% is met.

6.5 Irrevocable undertakings

Arrangements by way of an irrevocable undertaking to sell shares are not uncommon in Malaysia. Under this arrangement, a potential bidder is given the assurance that it will receive a certain level of acceptances for its bid. Typically, a potential bidder will seek to receive undertakings in respect of just over 50% of the total voting rights of the target company.

6.6 Break fees

It is not common to agree to a break fee in the event of an unsuccessful bid and there is no specific provision addressing break fees in the Code.

However, the Companies Act provides that a break fee cannot be paid by the target, as this would be providing financial assistance for the purpose of, or in connection with, the purchase of its own shares.

6.7 Common anti-takeover defense mechanisms

Without an ordinary resolution passed in a shareholder meeting, the target's board cannot take any action to frustrate an offer during the offer period or if it has reason to believe that a bona fide takeover offer is imminent. A shareholder meeting is required to:

(a) Issue any authorized but unissued shares of the target.

(b) Issue or grant options in relation to any unissued shares of the target.

(c) Create, issue or permit the creation or issuance of any securities carrying rights of conversion into or subscription for shares of the target.

(d) Sell, dispose of, acquire or agree to sell, dispose of or acquire the target's assets in a material amount.

(e) Enter into contracts (including service contracts), otherwise than in the target's ordinary course of business.

(f) Sell treasury shares into the market.

(g) Cause the target or any of the target's subsidiaries or associated companies to:

  (i) purchase or redeem shares in the target; or

  (ii) provide financial assistance for any such purchase or redemption.

(h) Declare dividends, other than in the normal course and the usual quantum.

However, a shareholder meeting is not required if any of the proposed actions were done pursuant to:

(i) A bona fide contract entered into before receipt of the takeover offer which was not designed to frustrate the target's takeover offer or change the target's activity.

(j) An obligation or other special circumstance which the Securities Commission approves in writing.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

Once a takeover offer has been made, the bidder can compulsorily purchase the shares from the remaining minority shareholders if the bidder acquires 90% of the nominal value of the shares of that class for which the offer has been made, within four months of making that offer. This excludes any shares already held by the bidder and its PAC at the date of the takeover offer. This squeeze-out can also be exercised in respect of convertible securities.

A minority shareholder can require the bidder to acquire its shares on the terms of the takeover or other terms that may be agreed if both:

(a) the bid has been accepted by the holders of at least 90% in value of all the shares; and

(b) the offer period has not expired.

7.2 Sell-out

If the takeover bid results in the bidder or its nominees holding 90% or more of the total number of issued shares of the target company, the shareholders who have not accepted the offer have a right to require the bidder to acquire their shares on the same terms as those offered under the offer.

7.3 Restrictions to acquire securities after the takeover bid period

Unless approved by the Securities Commission, where a general offer has been announced or posted but is withdrawn or lapses, the bidder and its PAC are prohibited, within a period of 12 months from the date such offer is withdrawn, lapses or fails, from either announcing the offer or possible offer for the target company or acquiring any voting shares or voting rights of the target company if the bidder or its PAC would thereby become obliged to make a mandatory general offer under the Code.

In addition, unless approved by the Securities Commission, neither the bidder nor its PAC may, within six months of the closure of any previous offer made by it which became or was declared unconditional in all respects, make a second offer to, or acquire any securities from, any shareholder in the target company on terms better than those made available under the previous offer.

8. Delisting

Following a mandatory or voluntary general offer, if the bidder exercises its squeeze-out rights, an application is made by the listed target company to Bursa Malaysia for confirmation of delisting.

Delisting of a company can be effected by the stock exchange or voluntarily by the target. Bursa Malaysia will automatically suspend trading in the target's shares when less than 10% of the shares are held by shareholders other than the bidder.

Bursa Malaysia will also delist the target in respect of the shares which have been the subject of a compulsory purchase resulting in the bidder emerging as the sole shareholder of the target company. However, in cases where the bidder has not managed to obtain acceptances amounting to 90% of the issued shares of the target held by others prior to the commencement of the takeover offer but has succeeded in making its offer unconditional, it will be necessary for the target to request delisting from the stock exchange, i.e., Bursa Malaysia.

A listed company cannot request delisting unless:

(a) The company convenes a general meeting to obtain approval from its shareholders and sends a circular, in the prescribed form, to the shareholders. A separate meeting and circular may be necessary for holders of any other class of listed securities.

(b) The resolution for withdrawal is approved by a 75% majority of the shareholders (or holders of any other class of listed securities) present and voting either in person or by proxy at the meeting. The proportion of shareholders or holders objecting to the withdrawal at that meeting must not be more than 10% in value.

(c) The shareholders (or holders) are offered a reasonable cash alternative or other reasonable alternative for their shares (exit offer).

(d) An independent adviser has advised and made recommendations to the shareholders in connection with the:

  (i) listing withdrawal; and

  (ii) fairness and reasonableness of the exit offer.

If the bidder has achieved acceptances rendering the offer unconditional, but is unable to exercise a compulsory purchase, the bidder will have to launch a second takeover offer to satisfy the exit offer requirement.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Andre Gan and Stephanie Phua of Wong & Partners, a member firm of Baker & McKenzie International, in Kuala Lumpur are the most appropriate contacts for inquiries about public M&A in Malaysia.

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Mexico

1. Overview

There are two securities exchanges in Mexico: the Mexican Stock Exchange (*Bolsa Mexicana de Valores*; www.bmv.com.mx and, as of 25 July 2018, the Institutional Stock Exchange (*Bolsa Institucional de Valores*; www.biva.mx). Securities of both Mexican and foreign issuers can be listed and traded on both Stock Exchanges. The Mexican equity market is highly concentrated and the top five companies by market value make up approximately 49% of the index. The index is weighted heavily in favor of export companies as exports account for approximately one-third of Mexico's gross domestic product.

Recently public M&A activity has slowed and only one hostile takeover has been attempted, which failed after a Supreme Court of Justice case. This was the proposed acquisition of control by Grupo Mexico of Grupo del Pacífico in which the Supreme Court of Justice ruled that publicly listed companies may adopt necessary – albeit not absolute – corporate measures to deter hostile takeovers.

2. General Legal Framework

2.1 Key regulatory bodies

The main regulatory body of the Mexican securities market is the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*; or the "**CNBV**"). The CNBV must approve a public M&A transaction and has the powers and authority to enforce the regulatory framework applicable to takeover bids, including the imposition of fines. In addition, commercial litigation may be pursued by affected parties and criminal penalties may be imposed by the courts.

Depending on the value, antitrust or sector considerations, takeovers and M&A transactions in the Mexican securities market will also be subject to scrutiny by other regulatory bodies. For example, if the transaction exceeds the antitrust thresholds or is suspected of having anticompetitive effects, the Mexican Antitrust Commission's (*Comisión Federal de Competencia Económica*) prior clearance will be required; if the transaction is in a specifically regulated sector, such as telecommunications, antitrust clearance would be required from the Federal Telecommunications Commission (*Comisión Federal de Telecomunicaciones*); and if the transaction entails an investment in excess of the yearly threshold defined for such purposes, or is effected in a sector of the economy which has not yet been liberalized, then approval by the Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*) will be required.

2.2 Legislation and rules

Pursuant to Mexican law, the regulation of securities issuers and markets, including public M&A transactions, is a reserved matter which may only be regulated by the federal legislature and, consequently, state legislatures cannot legislate on the subject.

The regulatory framework applicable to public M&A transactions (both voluntary and hostile) is as follows:

- The Securities Market Law (*Ley del Mercado de Valores*).
- The National Banking and Securities Commission Law (*Ley de la Comisión Nacional Bancaria y de Valores*).

- General rules applicable to the issuers of traded securities and other participants in the securities market (*Disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores*), issued by the CNBV.

- General rules applicable to the entities and issuers supervised by the CNBV that contract external audit services of basic financial statements (*Disposiciones de carácter general aplicables a las entidades y emisoras supervisadas por la Comisión Nacional Bancaria y de Valores que contraten servicios de auditoría externa de estados financieros básicos*).

- Internal rules of the Mexican Stock Exchange (*Reglamento interior de la Bolsa Mexicana de Valores*) and the Institutional Stock Exchange (*Bolsa Institucional de Valores*).

- Federal commercial and civil legislation, such as the General Law on Business Entities (*Ley General de Sociedades Mercantiles*), securities and commercial market practices (*usos bursátiles y mercantiles*) and the Federal Civil Code (*Código Civil Federal*).

- The Commerce Code (*Código de Comercio*).

- The General Law of Negotiable Instruments and Credit Operations (*Ley General de Títulos y Operaciones de Crédito*).

- Other specialized laws may apply to the transaction, such as the Federal Antitrust law (*Ley Federal de Competencia Económica*).

2.3 General principles

- Equal treatment: all security holders must be treated equally, regardless of the class or series of securities they hold.

- Continuity of minority protection rights: minority security holders are afforded a number of statutory minority protection rights (further discussed below) in connection with the appointment of directors, call for shareholders' meetings, opposition and deferral of adoption of resolutions and responsibility of administrators. Additionally, the by-laws of the issuer can provide for additional rights. The statutory minority protection rights are not affected by a bid.

- Disclosure and information: all security holders must be equally and sufficiently informed in a timely fashion in order to make an educated decision on the bid, and are entitled to receive the offering memorandum, information related to previous arrangements or understandings, the board of directors' opinion, the independent advisor's opinion and any other information containing material terms and conditions of the offeror's bid.

- Board and officers duty of loyalty and diligence: the members of the board of directors, those individuals appointed to participate in any of the committees of an issuer and the officers of the issuer have an absolute duty of loyalty and care, and shall act in the best interest of the issuer and its equity holders as a whole.

- Mandatory cash-out or squeeze-out: minority shareholders cannot be forced to sell their securities in the target company, even if the intent of the bidder is to acquire the control or the totality of the securities of the target.

2.4 Foreign investments

Foreign investments are not restricted in Mexico and are only subject to reporting upon completion (as opposed to prior authorization), unless they relate to certain specific activities.

The purchase by a foreign investor of a direct or indirect controlling interest in a Mexican public company conducting sensitive activities (as set out below), requires the prior approval of the Ministry of Economy and the National Commission of Foreign Investment, i.e., before final completion of the transaction. In relation to non-Mexican investors incorporated in Mexico, the requirement for prior approval is triggered by crossing a certain percentage threshold of the share capital or voting rights. The following are the foreign investment threshold percentages per sensitive activity:

- Up to 10% in cooperative production companies.
- Up to 49% in (i) companies that manufacture and commercialize or distribute explosives, firearms, cartridges, ammunitions and fireworks, not including the acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities; (ii) printing of newspapers for circulation solely throughout Mexico; (iii) series "T" shares in companies owning agricultural, ranching and forestry lands; (iv) fresh water, coastal and exclusive economic zone fishing not including fisheries; (v) integral port administration; (vi) port pilot services for inland navigation under the terms of the law governing the matter; (vii) shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation; (viii) supply of fuel and lubricants for ships, airplanes and railway equipment; (ix) broadcasting (this maximum foreign investment will be subject to the reciprocity between each country where the investor or economic agent who exercises control is from, directly or indirectly); and (x) regular and non-regular national air transport service, international air transport service, non-regular air taxi mode and specialized air transport service.

Foreign investment participation limits in the activities and companies mentioned above may not be exceeded directly nor through trusts, contracts, partnerships or by-law agreements, pyramid schemes or other mechanisms granting any control or a higher participation than the limit stated.

Foreign investment participation greater than 49% in port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging; shipping companies engaged in the exploitation of ships solely for high-seas traffic; concessionaire or permissioned companies of air fields for public service; private education services for pre-school, elementary, middle school, high school, college or any combination; legal services; construction, operation and exploitation of general railways and provision of public railway transportation services are activities that require prior authorization from the National Commission of Foreign Investment.

The following the activities are reserved for the Mexican government: (i) exploration and extraction of oil and other hydrocarbons; notwithstanding the foregoing, the Federal Government through the National Hydrocarbons Commission (also known as CNH) is authorized to award and execute agreements with private entities for the exploration and extraction of hydrocarbons; (ii) planning and control of the national electric system, as well as the public services of transmission and distribution of electricity; (iii) generation of nuclear energy; (iv) radioactive minerals; (v) telegraph; (vi) radiotelegraphy; (vii) postal service; (viii) bank note issuing; (ix) mining of coins; (xi) control, supervision and surveillance of ports, airports and heliports; and (xii) any others as expressly provided by applicable law.

The following activities are reserved for Mexicans or Mexican companies with a foreigners' exclusion clause: (i) domestic land transportation for passengers, tourism and freight, not including messenger or courier services; (ii) development banks; and (iii) rendering of professional and technical services as prescribed by applicable legal provisions.

Foreign investors may not participate directly in the activities and companies mentioned above nor through trusts, contracts, partnerships or by-law agreements, pyramid schemes or other mechanisms granting any control or participation.

3. Before a Public Takeover Bid

3.1 Shareholders' rights in publicly traded companies

Shareholding	Rights
One share of the capital stock of the publicly traded company (the "**Company**")	• In the absence of the minimum number of members of the audit committee and when the board of directors has not appointed any interim members according to the provisions of Article 25 of the Mexican Securities Law, any shareholder may request the chairperson of the board to call, within a term of three calendar days, a general shareholders' meeting which shall make the corresponding appointment. In the event the call is not made within this period, any shareholder may appear before the judicial authority of the Company's legal domicile to request such court to call the shareholders' meeting. In the event that the meeting cannot be convened or, if convened, the appointment is not made, the judicial authority of the Company's legal domicile, upon request and proposal by any shareholder, shall appoint the corresponding directors, who shall hold office until the general shareholders' meeting makes the final appointment. • To call for a general shareholders' meeting when (i) none have been held during the last 2 preceding tax years, or (ii) when the ones held during such period have not discussed the matters set forth in Article 181 of the General Business Entities Law. • To attend and vote at general shareholders' meetings, except in those cases when the CNBV has authorized the Company to issue limited-voting rights shares, restricted-voting shares or non-voting shares (i) not exceeding 25% of the outstanding capital of the Company or such higher percentage authorized by the CNBV and provided that such shares shall be converted into ordinary shares within 5 years after placement, or (ii) in excess of 25% of the outstanding capital of the Company on the basis of the holder's nationality. • To have access, at the Company's offices, to the information and documents related to each of the

Shareholding	Rights
	items included in the agenda of the relevant shareholders' meeting, free of charge and at least 15 calendar days before the date of the meeting. • To prevent the general shareholders' meeting from considering any issues submitted in the agenda under the heading of general issues or another analogous concept. • To be represented at the shareholders' meetings, by persons who evidence their representation by means of proxy forms prepared by the Company and made available to such shareholders through stock exchange intermediaries or at the Company, at least 15 calendar days before such meeting. • To enter into shareholders' agreements, as provided in Article 16 of the Securities Market Law.
5% or more (at a general shareholders' meeting)	To veto a resolution approving measures intended to prevent the acquisition of shares that will transfer the control of the Company to third parties or to the existing shareholders, whether directly or indirectly (poison pill actions).
5% or more of the capital stock of the Company (with or without voting rights)	The filing of any liability action resulting from acts or omissions of management or the members of the surveillance committees of the Company.
For each 10% of the capital stock of the Company	• To appoint and revoke the appointment of a member of the board of directors at a shareholders' meeting. • To request, from the chairperson of the board of directors or of the audit and corporate practices committees, the calling of a general shareholders' meeting. • To request the deferment of the vote on any issue with respect to which they consider themselves insufficiently informed. The deferment will be in place for three calendar days and will not require the issuance of a subsequent call notice for the meeting to be reconvened.
20% or more of the capital stock of the Company	To oppose in court, individually or in the aggregate, the resolutions of the general shareholders' meetings with respect to which they have voting rights, including those with limited or restricted voting rights.
75% or more of the capital stock of the Company	Constitutes quorum to hold an extraordinary shareholders' meeting whereby any of the following resolutions, among others, may be adopted pursuant to the affirmative vote of

Shareholding	Rights
	50% or more of the capital stock of the Company: change in the corporate purpose; transformation; merger; and split-off.
95% or more of the capital stock of the Company	To request the cancellation of the registration of the securities of the Company in the National Securities Registry.

3.2 Use of NDAs and due diligence

Publicly traded companies have continuing disclosure obligations and, therefore, the following information must be made available to the general public:

- Reports concerning corporate actions.
- Quarterly reports, including financial statements, and the observations and analysis of the administration regarding the operations' results and the financial condition of the Company.
- Annual audited financial statements. The opinion of the independent auditors must comply with international audit norms. For foreign issuers the opinion must comply with audit norms of their home country).
- Annual reports regarding the activities of the audit committee and the corporate practices committee.
- Reports concerning mergers, split-offs, acquisitions or sales of assets.
- Reports of relevant events.
- Reports concerning policies and operations.
- Reports about the positions maintained by the Company in derivatives.
- Any other information determined by the CNBV.

Additional documentation or information may be requested and must be delivered to the offeror in a public M&A transaction, provided it does not entail the disclosure of non-public material information breaching the restrictions established under the Securities Market Law. It is common practice to execute a non-disclosure agreement prior to the delivery of information to an offeror.

3.3 Investor rights and restrictions

See 3.1.

3.4 Method of acquisition

As further discussed in 4 (Effecting a Takeover), a publicly traded company may be acquired via a public tender offer, whereby the totality or a part of the stock of the publicly traded company is acquired by the offeror, either through a friendly takeover or a hostile takeover. Hostile takeovers are extremely rare in Mexico.

Friendly takeovers are either voluntary or mandatory public tender offers, recommended by the board of directors of the publicly traded company. The minimum term of any public tender offer shall be 20 business days. The offer must be allocated proportionally, regardless of the time of acceptance. The offeror may change the terms of its offer before its completion if the new terms are more favorable for the offerees or if it was so established in the corresponding brochure. If the CNBV considers the amendments to the terms of the offer to be significant, the term for the offer must be extended for an additional period of at least five business days. In any case, the public must be informed of such amendments to the offer through the same means pursuant to which the offer was originally made. The offerees that had accepted the offer shall have the right to decline in the event of significant amendments.

The procedure and requirements for mandatory tender offers must be followed when the offeror intends to acquire or attain, directly or indirectly, 30% or more of the common stock of a publicly traded company, through one or several simultaneous or successive transactions. In such event, the following rules apply:

- The offer shall be extended to the different series of shares of the Company, including those with limited or restricted voting rights and non-voting shares.
- The consideration offered must be the same, regardless of the class or type of shares.
- The offer shall be made for (i) the percentage of the capital stock of the Company equivalent to the proportion of common stock intended to be acquired, with respect to the total number of shares or for 10% of such capital, whichever is greater, provided that the acquisition does not imply the offeror taking control; or (ii) 100% of the capital stock when the buyer intends to acquire control (unless the CNBV has authorized a smaller percentage).
- The buyer shall indicate the maximum number of shares the offer covers and, if applicable, the minimum number on which such acquisition is conditioned.

For the purposes of the Securities Market Law, "control" means the capacity of one person or a group of persons to carry out any of the following:

- To impose, directly or indirectly, any decision at a general shareholders' meeting (or equivalent body) or to appoint or remove the majority of the directors (or their equivalent).
- To hold ownership rights allowing a person to directly or indirectly exercise voting rights in excess of 50% of the capital stock of a Company.
- To dictate, directly or indirectly, the management, strategy or principal policies of a Company, either through the ownership of securities, by virtue of an agreement or otherwise.

Any acquisitions contravening these requirements shall be null and void and the persons involved shall be liable vis-à-vis the other shareholders, who may be indemnified for losses and damages.

3.5 Insider dealing rules

See 6.1.

3.6 Disclosure of shareholdings

(a) Initial disclosure threshold: any person or group of persons acquiring, directly or indirectly, in the stock exchange or over the counter, through one or several transactions, simultaneously or successively, shares of a publicly traded company resulting in an ownership interest equal to or greater than 10% (but not exceeding 30%), must disclose such circumstance to the investing public the next business day following the acquisition. Furthermore, such person or group of persons shall inform of its intention of whether or not to acquire a significant influence in the publicly traded company.

(b) Subsequent disclosure thresholds

(i) Related parties of publicly traded companies who directly or indirectly increase or decrease their capital interest by 5% through one or several simultaneous or successive transactions must disclose such circumstance to the investing public the next business day following the acquisition, as well as their intent to acquire or not a significant influence (or increasing it) in such publicly traded companies.

(ii) Any person or group of persons who, directly or indirectly, own 10% or more of the shares of a publicly traded company, as well as the members of the board of directors and relevant executive officers of such persons, must inform the CNBV, and the investing public when applicable, of the acquisitions or sales made of such securities.

(c) Aggregation of interests of "concert group"

"Group of persons" as used under the Securities Market Law, means those individuals or legal entities having an agreement amongst each other to aggregate their interests to take decisions in concert. It is presumed, unless otherwise demonstrated, that the following constitute a "group of persons":

(i) Any individuals related either by blood, marriage or civil kinship up to the fourth degree, the spouse and concubine.

(ii) Entities belonging to the same consortium (group of entities linked by one individual or a group of persons having control over the same) or corporate group (group of entities organized under direct or indirect capital stock participation structures, in which the same company maintains control over such entities), and the persons having control over such entities.

3.7 Minority shareholders' rights

The Securities Market Law establishes minimum percentages as to minority shareholders' rights. These minimum percentages may be further decreased in the Company's by-laws, thereby broadening these protections to holders of fewer shares.

Please refer to the table in 3.1 for further information on minority shareholders' rights provisions under the Mexican Securities Law.

3.8 Mandatory offer threshold

When an offeror intends to acquire or attain, directly or indirectly, 30% or more of the common stock of a Company, a mandatory tender offer must be carried out and the offer shall be made for the percentage of the capital stock of the Company equivalent to the proportion of common stock intended to be acquired, with respect to the total number of shares or for 10% of such capital, whichever is greater, provided that the acquisition does not imply the offeror taking control.

When the offeror intends to acquire or attain, directly or indirectly, control, a mandatory tender offer must be carried out and the offer shall be made for 100% of the capital stock (unless the CNBV authorizes a smaller percentage).

4. Effecting a Takeover

This section addresses a scenario where the offeror intends to maintain the listing of the public company after completion of the transaction. See 8 (Delisting) for information on the privatization process where a delisting is contemplated.

There are two main forms of tender offer in Mexico:

(a) a voluntary tender offer, in which an offeror voluntarily makes an offer for all the voting securities issued by the Company; and

(b) a mandatory tender offer, which an offeror is required to make if, as a result of an acquisition of securities, it surpasses a 30% threshold of the voting securities of the target.

An offeror that intends to launch a tender offer must include a draft prospectus and offer notice with its notification to the CNBV, among other transaction documents.

4.2 Voluntary tender offer

As discussed in 3.4, the offeror is free to make the tender offer subject to prior approval from the CNBV. The offeror is free to determine the price and the form of consideration offered to the target shareholders:

(a) The minimum term of the offer must be 20 business days.

(b) The allocation of the offer must be pro rata among shareholders, regardless of the acceptance term.

(c) The offer may be amended at any time prior to its conclusion, as long as the amendments improve the conditions originally offered to the shareholders. The offer may be extended for a minimum of five additional business days if the aforementioned amendments are deemed relevant by the CNBV. Any persons who accepted the offer before the amendments were made may revoke their acceptance without any liability.

(d) The offeror is forbidden from executing, directly or indirectly, any transaction with the securities that are subject to the offer, from the time the offer was made until its conclusion.

4.3 Mandatory tender offers

As discussed in 3.4, a mandatory tender offer is triggered as soon as a person or group of persons acting in concert as a result of an acquisition of voting securities, holds (directly or indirectly) more than 30% of the (actual outstanding) voting securities of the target company. In addition to those requirements applicable to voluntary tender offers, the following apply:

(a) the offer will have to be made to all series of shares of the target company, including those with limited voting or without voting rights;

(b) the consideration offered must be the same for all securities:

  (i) in the event the offeror intends to limit its ownership interest to a percentage that does not imply control of the target company, the offer shall consist of an offer to purchase (i) the percentage of the shares which equals the proportion of shares intended to be acquired regarding the total amount of the shares or (ii) 10% of the capital stock of the target company, whichever is greater; and

  - (ii) in the event the offeror intends to acquire control of the target company, the offer shall consist of an offer to purchase 100% of the shares issued by the issuer, provided that the CNBV may grant certain exceptions for a lower percentage of shares offered while considering the rights of the minority shareholders. The request filed before the CNBV must include an approval from the target company's board of directors;

- (c) the offer must include the maximum number of shares offered and the condition of minimum shares to be acquired. If all of the shares of the Company are acquired, the offeror must make sure that the target company has two remaining shareholders, as required under the General Law on Business Entities;

- (d) the offeror is not allowed to offer any additional consideration, premium or surcharge to the recipients of the offer that may be deemed excessive and could be seen as an inducement, provided that consideration paid as a result of agreements related to the offer (which contain certain affirmative or negative covenants favoring the target company), which have been previously approved by the target company's board of directors and disclosed to the public, are allowed; and

- (e) in the event the individual or group of persons that has placed an offer regarding an target company also holds at least 30% of the shares issued by another public company such individual or group of persons will not need to carry out a mandatory tender offer regarding the shares of the issuer when the offer represents less than 50% of the consolidated assets of the issuer for which the offer was placed. Notwithstanding the foregoing, the CNBV may allow the following transactions without having to authorize a mandatory tender offer:

  - (i) Acquisitions at market price resulting from a redistribution of shares of common stock among members of a same group of individuals or legal entities, whether or not such group prevails, provided that the acquiring parties have been shareholders of the Company for more than 5 years and that the group of individuals or legal entities who maintain control as a result of the acquisition had held a significant percentage of the capital stock during such term.

  - (ii) Capital stock decreases pursuant to which the equity interest of an individual or legal entity, or group of individuals or legal entities, results in 30% or more of the total shares of common stock.

  - (iii) When the feasibility of the issuer as a going concern is at risk and the shares of common stock are acquired as a consequence of capital increases or corporate restructurings such as mergers, purchases and sales of assets and liabilities, and capitalization, provided that there is a favorable opinion from the issuer's board of directors, previously approved by the corporate practices committee.

  - (iv) An attachment and distribution of collateral on shares, whether in or out of court, resulting from a past-due debt in which collateral is granted in favor of financial entities, even when such entities acted as trustees.

  - (v) Acquisitions by inheritance, bequest or donation, of a spouse, concubine or male concubine, as well as from individuals related by blood, marriage or civil kinship up to the fourth degree.

(vi) Transactions that are consistent with the protection of the interests of the minority shareholders of the issuer.

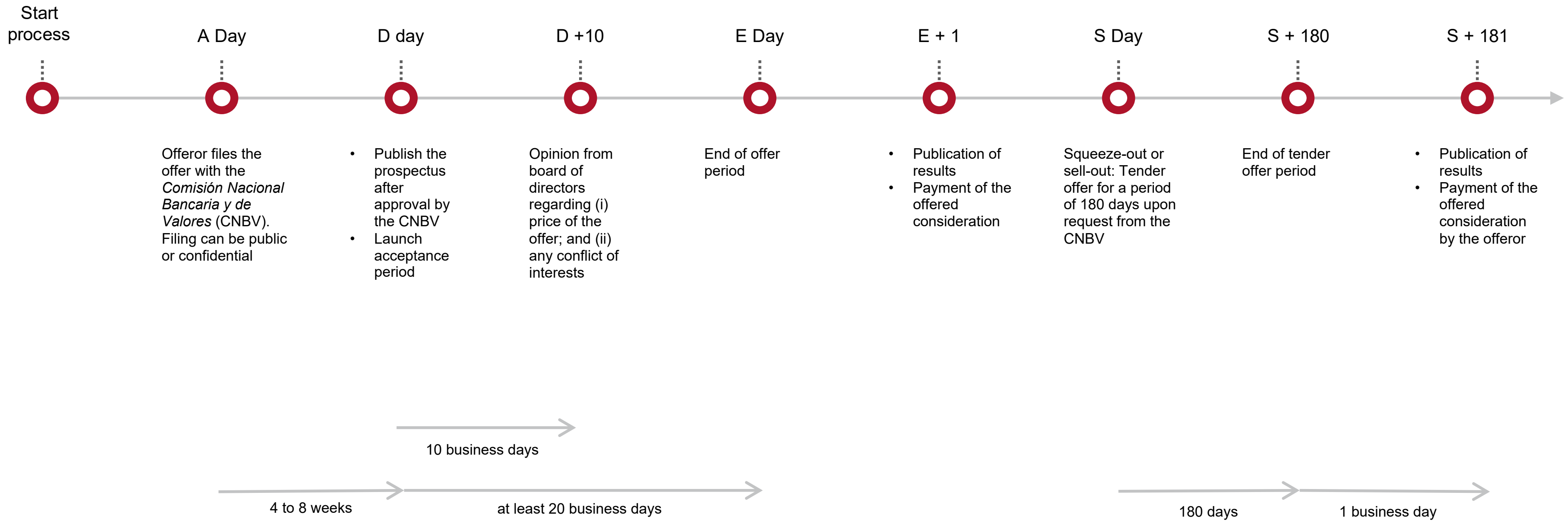
5. Timeline

As a general rule, a takeover tender offer process for a mandatory tender offer is similar to the process that applies to the voluntary tender offer, with certain exceptions. The table below contains an overview of the main steps of a typical voluntary tender offer process under Mexican law.

Steps and Timeline	
1.	Preparatory stage: • Preparation of the tender offer (study, due diligence, financing, draft prospectus and offer notice). • The offeror approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2.	The offeror files the offer with the CNBV. The filing can be public or confidential.
3.	Review and approval of prospectus of the offeror by the CNBV. Approval: Four to eight weeks.
4.	Publication of the prospectus after approval by the CNBV.
5.	Launch of the acceptance period. Duration: not less than 20 business days.
6.	Opinion from the board of directors, regarding (i) the price of the offer; and (ii) any conflict of interests, must be filed within 10 business days from the date the offer is launched. The term may be increased or decreased by the CNBV.
7.	Publication of results: one business day after the end of the offer period.
8.	Payment of the offered consideration by the offeror: One business day after the end of the offer period.
9.	Squeeze-out or sell-out: Tender offer for a period of 180 days upon request from the CNBV.
10.	Publication of results: One business day after the end of the offer period.
11.	Payment of the offered consideration by the offeror: One business day after the end of the offer period.

Set out below is an overview of the main steps for a voluntary tender offer in Mexico.

Voluntary tender offer (indicative timeline)



Start process	
A Day	Offeror files the offer with the *Comisión Nacional Bancaria y de Valores* (CNBV). Filing can be public or confidential
D day	• Publish the prospectus after approval by the CNBV • Launch acceptance period
D +10	Opinion from board of directors regarding (i) price of the offer; and (ii) any conflict of interests
E Day	End of offer period
E + 1	• Publication of results • Payment of the offered consideration
S Day	Squeeze-out or sell-out: Tender offer for a period of 180 days upon request from the CNBV
S + 180	End of tender offer period
S + 181	• Publication of results • Payment of the offered consideration by the offeror

10 business days

4 to 8 weeks

at least 20 business days

180 days

1 business day

6. Takeover Tactics

6.1 Insider dealing

For the purposes of the Securities Market Law, it is deemed that certain individuals of the Company have access to insider information. The burden of proof is on such individuals. Such individuals shall not:

- enter into or instruct the execution of transactions, directly or indirectly, in relation to any kind of securities issued by the Company or any negotiable instruments representing any such securities (including options or derivatives having, as underlying, the aforementioned securities or instruments, all of which are hereinafter referred to as "**shares**" or "**securities**"), the quotation or price of which may be influenced by such information, as long as it is classified as inside information;
- provide or disclose the information to any third party, except when by reason of employment, position or commission, the individual to whom it is provided or transferred must know such information; or
- make recommendations concerning any kind of securities issued by the Company, the quotation or price of which may be influenced by such information, as long as it is classified as inside information.

The restricted individuals are:

- the members and the secretary of the board of directors, the examiners, the chief executive officer and other relevant officers, as well as the managing directors and the external auditors of the Company or entities controlled by it;
- the individuals who directly or indirectly hold 10% or more of the shares representing the capital stock of the Company;
- the members and the secretary of the board of directors, examiners, the chief executive officer and other relevant officers, the managing directors and external auditors, or any persons equivalent to the foregoing, of any entities that directly or indirectly hold 10% or more of the capital stock of the Company;
- the members and secretary of the board of directors, examiners, the chief executive officer and other officers immediately below the latter, the statutory comptroller, managing director and agents, or any persons equivalent to the foregoing, of stock exchange intermediaries or of any individuals or legal entities providing independent or personal subordinated services to the Company, in any relevant event constituting privileged information, as well as of the legal entity, which may or may not have the nature of an issuer, that had some relation or financial, administrative, operational, economic or legal link with the Company to which the relevant event in question is attributed to, or to those who participated in any nature with the act, event, or happening relative to said event;
- the shareholders who directly or indirectly hold 5% or more of the capital stock of financial entities, when these act as issuers;
- the shareholders who directly or indirectly hold 5% or more of the capital stock of the holding companies of financial groups, as well as those who directly or indirectly hold 10% or more of the capital stock of other financial entities, when all of them are members of the same financial group and at least one of the members of the group is the issuer;

- the members and the secretary of the board of directors, the chief executive officer and other officers immediately below the latter, the statutory comptroller and the managing directors of any holding companies of financial entities mentioned in the preceding paragraph;
- the individual or group of individuals who have a significant influence on the issuer and, as the case may be, on the companies composing the corporate group or consortium to which the issuer belongs;
- the individuals that have decision-making powers over the issuer; and
- the individuals or legal entities that trade securities deviating from their historical market investment patterns and who reasonably could have had access to inside information through any of the individuals mentioned above. The individuals who have reasonable access to insider information are, in general, certain family members, partners, associates and co-owners, as well as any person who had contact with any of the referenced individuals.

Most of such restricted individuals are, in general, not allowed to acquire, directly or indirectly, any securities issued by an issuer to whom they are "related", during a term of three months from the last transaction executed on the Company's securities.

Publicly traded companies are required to establish guidelines, policies and control mechanisms in connection with transactions carried out by their directors, executive officers and employees who, by virtue of their employment, position or commission, have or may have access to insider or confidential information related to any processes for the registration of securities with the National Securities' Registry, public offerings, acquisition or transfer of shares held by the same issuers, or transactions ordered by the investing public.

Anyone who, being under legal or contractual obligation of confidentiality, reserve or secrecy, provides or transfers insider information to a third party, may be subject to administrative, civil and criminal liability, which carries an imprisonment term of 3-15 years.

6.2 Information to be disclosed

Publicly traded companies must disclose, to the CNBV and the stock exchange, certain information regarding the operations of the Company, including, without limitation, corporate and financial information. See 3.2.

6.3 Due diligence and market abuse rules

In Mexico, there is no obligation to provide due diligence information to a potential offeror. Thus, this situation could be used by a target company to delay or inhibit a takeover. However, the common practice is for the target company to provide due diligence information to a potential bidder if the proposed transaction is friendly. If the proposed transaction is hostile, the offeror will have to rely on the Company's publicly available information.

Furthermore, the Securities Market Law establishes provisions to prevent abuse practices dealing with privileged information. See 6.1.

6.4 Anti-takeover defense mechanisms

Hostile public M&A transactions are permitted in Mexico. However, in practice, such acquisitions are uncommon. Furthermore, in the proposed recent hostile acquisition of control by Grupo Mexico of Grupo Aeroportuario del Pacífico, the Supreme Court of Justice ruled that publicly listed companies may adopt necessary albeit not absolute corporate measures to deter hostile takeovers as long as such measures do not create an obstacle to friendly takeovers. This sets a non-binding court precedent that may impact the viability of hostile takeovers.

The most effective and most used anti-takeover defense mechanisms are found in the by-laws of publicly traded companies and by means of measures similar to "poison pills" through a capital increase. However, it is not permissible to establish a provision that completely deters the acquisition of a target company. In this regard, the principal provisions that cannot be established in the by-laws of a publicly traded company are the following:

- Restrictions of any nature on the transfer of the shares of a target company. As an exception, it is possible to require the pre-approval of the board of directors for the acquisition of securities of a Company over and above a certain percentage. For these purposes, the criteria that should be followed by such board of directors to issue a resolution shall be included, along with the term for the issuance of such resolution, which shall not exceed three months.
- Provisions that establish causes for the exclusion of a shareholder or restrictions on the exercise of the rights of a shareholder to be excluded from the Company.
- Provisions that increase or decrease the economic rights of a shareholder.
- Provisions that restrict friendly takeovers.

6.5 Deal protection methods

In Mexico, it is common for parties of a friendly acquisition transaction to agree penalty clauses in the event the deal is not closed or terminated by either party due to breach of an exclusivity covenant.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

Minority shareholders of a publicly traded company cannot be obligated to sell their securities. A squeeze-out is, therefore, voluntary on the part of the minority shareholders who may elect, or decide not to elect, to sell their shares in the Company.

In the event there is a shareholders' resolution adopted by at least 95% of the shares that form the corporate capital of the Company to approve an offer aimed to implement a squeeze-out of minority shareholders, regardless of the type of security they hold, the Company will then make a public offer pursuant to the following:

(a) The offer must be exclusively addressed to the shareholders or to the holders of instruments representing the issuer's shares, which are not part of the group of individuals or legal entities in control of the issuer at the time of the application filed with the CNBV.

(b) The offer must be made at least at the highest value between the quotation value and the book value of the shares (in this latter case, according to the last quarterly report submitted to the CNBV and the stock exchange before the beginning of the offer), adjusted, when such value has been modified, according to criteria applicable for the determination of relevant information, in which case the most recent financial information that the issuer has must be considered and a certification from an authorized executive officer of the issuer must be submitted with respect to the determination of the book value.

(c) The stock market quotation value shall be the weighted average price per trading volume during the last 30 days in which the shares were traded, before the start of the offering, during a term not to exceed six months. In case the number of days when the aforesaid shares were traded during the established term was less than 30, the actual days in which they were in fact traded shall be considered. If there was no trading during such period, then the book value shall be considered.

(d) In the event that the issuer has more than one series of shares listed, the average mentioned in the preceding paragraph shall be calculated for each series that is intended to be cancelled, and the average that turns out to be greater shall be considered as the quotation value for all series.

(e) The Company must transfer the necessary funds to acquire the minority shares to a special purpose trust, during a period of six months.

(f) The individual or legal entity, or group of individuals or legal entities, who have control over the issuer at the time when the CNBV required the issuer to launch the offer, shall be jointly liable with the issuer for the consummation of the transaction.

(g) The CNBV may order, at the expense of the issuer, that a valuation be carried out by an independent expert to determine the price of the offer when this is considered essential to protect the interests of the general public.

7.2 Sell-out

If, as a result of a mandatory or voluntary tender offer for less than 100% of the shares, less than 12% of the shares are held by the general public, the offeror will be forced to extend the offer for the remaining shares or, within 30 days, launch a second offer for 100% of the shares in the same conditions as the first offer. As stated above, the minority shareholders are not required to sell their securities.

7.3 Squeeze-out followed by a merger

If the squeeze-out is carried out with a view to subsequently carrying out a corporate merger through which the offeror absorbs the target company, the 95% threshold referred to in 7.1 is required.

8. Delisting

As a general rule, the CNBV must approve a delisting of a Company that is listed on the Mexican Stock Exchange or the Institutional Stock Exchange.

The CNBV will customarily not allow a delisting of a Mexican issuer (even if the issuer no longer has a relevant float) unless a squeeze-out or sell- out has been carried out, pursuant to the rules set forth herein. In the event an issuer is up to date with its reporting obligations and 95% of the outstanding securities issued by the issuer approve a delisting, the CNBV will authorize it pursuant to a tender offer as set forth in 7.1. above, and considering the following:

- The number of investors that would have participated in the offer.
- The percentage of the capital owned by such investors.
- The particularities of investors that did not participate in the offer and, the circumstances of why they abstained from accepting the offer.

The CNBV may provide certain exemptions to the obligations set forth above when it is justified by the reduced number of securities held by the general public. In any case, the trust mentioned in 7.1(e) above must be created.

9. Contacts within Baker McKenzie

Jorge Ruiz in the Juarez office and Lorenzo Ruiz de Velasco and Andres Barroso in the Mexico City office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Mexico.

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The Netherlands

1. Overview

Over the course of recent years, the Netherlands has enjoyed an active public M&A landscape which has attracted international attention. This is because the Netherlands is considered a favorable venue for international companies due to its corporate legal system. Consequently, there are many large non-Dutch companies operating internationally that are either headed by a Dutch entity listed on Euronext Amsterdam or have chosen the Netherlands for their international headquarters, e.g., MYT Netherlands Parent, CNH Industrial, Stellantis, LyondellBasell, Ferrari and the Airbus Group. The reasons for choosing a Dutch parent company or the Netherlands as the HQ location differ but the following factors are considered key: the Netherlands' favorable tax regime, its efficient infrastructure (with Schiphol Airport as a global hub), an excellent professional services sector (including industry), high-levels of education, its reliable and neutral judicial system. All companies – including those with Dutch origins – listed on Euronext Amsterdam boast a highly international shareholder base. In general, a large majority of the shareholders of Dutch listed companies are located outside of the Netherlands.

Whether an international group is headed by a Dutch or foreign legal entity which has its listing in the Netherlands, the Dutch public offer rules will apply. The entire process of a (potential) public offer is subject to Dutch law. Even if the players are non-Dutch, their conduct during a public offer will be driven by Dutch law. Recent events indicate that, in such situations, Dutch corporate law attracts international attention from the investment community as well as from the media. This is particularly the case with respect to some specific Dutch legal features such as the anti-takeover foundations (an independent special purpose entity under Dutch law), which can hamper hostile offers. Examples include PPG's interference with AkzoNobel and the takeover attempt by Kraft Heinz to acquire Unilever.

The following sections set out various aspects of a public offer and other methods of acquisitions for securities, e.g., shares and bonds, admitted to trading on a regulated market in the Netherlands.

2. General Legal Framework

2.1 Competent authorities

The Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten*) ("**AFM**") is the authority that supervises the operation of the financial markets in the Netherlands and is responsible for ensuring that: (i) no public offer is made without an approved public offer document, (ii) such offer document is made publicly available and (iii) there is compliance with the rules and regulations relating to the public offer and the process.

The Enterprise Chamber of the Amsterdam Court of Appeal (*Ondernemingskamer van het Gerechtshof te Amsterdam*) ("**Enterprise Chamber**") has jurisdiction over squeeze-out procedures designed for public offers and mandatory offers. In addition, the Enterprise Chamber is the competent court in "inquiry procedures" (*enquêteprocedures*), the scope of which is so broad that it has become the preferred corporate litigation venue for, among others, offerors, (major) shareholders or the target company in hostile situations, including shareholders' activism.

2.2 Applicable legislation

The public offer rules are primarily based on the European Directive (2004/25/EC) on public offers. The main public offer rules are set out in the Dutch Financial Supervision Act ("**FSA**"), the Public Offer Decree ("**Decree**"), certain exemption decrees (together with the FSA and the Decree, the "**Public Offer Rules**") and several policy regulations of the AFM. In addition, Book 2 of the Dutch Civil Code

("**DCC**"), the Dutch Corporate Governance Code, the Works Councils Act and the SER Resolution concerning the Merger Code may also apply in a public offer process.

Several Dutch listed companies have issued depositary receipts for shares ("**DRs**"), in particular those that are also listed in the United States. Most provisions of the DCC and practically all of the Dutch Public Offer Rules apply to (holders of) DRs. Please note that where reference is made to shares or securities, DRs are also included.

2.3 The Dutch corporate governance system

Historically, the Dutch corporate governance system of legal entities has been based on a two-tier board management system, which means that a Dutch listed company should have two separate corporate bodies: (i) a management board, which consists of the managing directors; and (ii) a supervisory board, which consists of the supervisory directors. The management board's task is to run the company and determine its strategy, whereas the supervisory board's task is to supervise and advise the management board. A managing director is similar to the Anglo-American executive director and the supervisory director bears similarities to the non-executive director in the Anglo-American context.

However, it is possible to combine both corporate bodies into one and have a "one-tier" board management board. A one-tier board consists of both executive directors (similar to managing directors in the two-tier board system) and non-executive directors (similar to supervisory directors in the two-tier board system). Since 2010, the one-tier board system has been incorporated in Dutch statutory law. The one-tier board system has become increasingly popular, and is, not surprisingly, often the management board system of international groups of non-Dutch origin.

The tasks, duties and responsibilities of (the members of) the management board and supervisory board are included in the DCC. Furthermore, the Dutch Corporate Governance Code ("**Code**") applies to Dutch public limited companies listed on a regulated market. The Code contains principles and best practice provisions that regulate relations between the boards and the shareholders. Compliance with the Code is based on the "comply or explain" principle, which means that the company either applies the principles or deviates from them. Any deviations from the principles and best practice provisions must be specifically disclosed in writing (in a separate chapter of the company's annual report) setting out why and to what extent a particular principle does not apply.

The DCC's principle of "collective responsibility" is also relevant. Pursuant to this principle, each managing director (or, in a one-tier board, the executive and non-executive directors) is responsible for the general course of business and proper management of the company and is therefore jointly and severally liable for any improper performance by the board or any board member of their duties (*onbehoorlijk bestuur*).

2.4 General principles applicable to public offers

(a) Market transparency

Pursuant to the principle of market transparency, access to information on a target company should be equal for all investors. By doing so, instances of insider trading occur less frequently and disclosure irregularities are prevented. This principle is implemented in the Market Abuse Regulation (No 596/2014 EC) ("**MAR**") and Dutch regulations on market abuse (together, the "**Market Abuse Rules**") and applies to companies listed on Euronext Amsterdam. The Market Abuse Rules prescribe that listed companies have to publicly disclose inside information that, if made public, would be likely to have a significant effect on the share price ("**Inside Information**"). For a further explanation on the obligations under the MAR, see 2.5.

(b) Level playing field

The offer should be addressed to all shareholders of the same class or category, and under the same terms and conditions to maintain a level playing field between the shareholders.

2.5 MAR

The MAR came into force on 3 July 2016. One of the main objectives of the MAR is to establish a more uniform interpretation of the European Union market abuse framework.

The MAR contains:

(a) specific requirements when, among other things, a company is considering whether to disclose Inside Information in connection with a contemplated public offer, prior to the public announcement of such transaction to its (major) shareholders, i.e., market soundings;

(b) an obligation to inform the AFM if a company has used the option to delay the public disclosure of Inside Information pursuant to an exemption. The notification should be made immediately after the public disclosure of Inside Information. When requested by the AFM, companies must also provide a written explanation on how the exemption requirements to benefit from the exemption have been met (see 3.2); and

(c) stringent requirements as to the information to be disclosed in the insider lists, such as the obligation to include the date and time at which a person obtained, and ceased to have, access to Inside Information.

On 8 October 2024, the European Council adopted the Listing Act, which aims to amend the Market Abuse Regulation (MAR) with the objective of making EU capital markets more attractive and accessible to companies, particularly small and medium-sized enterprises, while enhancing transparency, market integrity, and investor protection. Part of the amendments to the MAR, specifically related to insider trading rules and market sounding, came into force on 4 December 2024.

The second part of the amendments to the Listing Act, pertaining to the Market Abuse Regulation (MAR), will take effect on 5 June 2026. These amendments address changes to the requirements for delaying the disclosure of inside information and reducing the disclosure obligations related to inside information.

2.6 Alternative methods of acquisition

Other methods to acquire (an interest in) a target company or its business include the following:

(a) Asset deal – In an asset deal, a party acquires the business, i.e., the assets and liabilities, of the target company. The advantage of this method is that the party can choose which assets and liabilities it wishes to acquire and acquire full control over the business, which enhances deal certainty. If the transaction concerns the entire or materially all of the target company's business, its shareholders' meeting must approve the contemplated transaction. This method is often used when: (i) the market capitalization of the target company is significantly higher than the value of the business; (ii) there is uncertainty as to the acceptance threshold when a public offer is made; (iii) more favorable from a tax point of view; or (iv) a public offer would encounter major regulatory restrictions.

(b) Legal merger – In a legal merger, one company can disappear into the other or the two companies can form a new legal entity in which they will both disappear. In case both companies disappear, the shareholders of these entities will receive listed shares of the new legal entity. Prior to a legal merger, the shareholders' meetings of both companies must approve the merger. Legal mergers can be either domestic or between companies incorporated within the European Economic Area ("**EEA**"). Shareholders who voted against a cross-border merger in the relevant shareholders' meeting have the possibility of exiting in return for a cash-out. For instance, the EUR 32 billion Ahold/Delhaize merger (listed on Euronext Amsterdam and Euronext Brussels, respectively) is a prime example of a cross-border legal merger. This method offers a great level of deal certainty and is considered to be specifically suitable for mergers of equals.

(c) Share purchase deal of a subsidiary – A party may also choose to acquire the business of a target company through a share purchase deal whereby a subsidiary of such target company is acquired. The subsidiary holds and operates the entire business of the target company.

2.7 Governmental prior approval

There are certain sectors in which there are restrictions on the acquisition of control. Such sectors include telecom, gas, and energy. Moreover, on 1 June 2023, the Act on Security Screening of Investments, Mergers and Acquisitions (known as the Vifo Act) entered into force, introducing security assessments for investments, mergers and acquisitions that may pose a risk to national security. The enforcement of the Vifo Act is entrusted to the BTI (*Bureau Toetsing Investeringen,* which falls under the Ministry of Economic Affairs and Climate).

The Vifo Act applies to acquisition activities involving the following sectors:

- So-called vital services, which include: (i) heat networks; (ii) nuclear energy; (iii) energy extraction; (iv) gas storage; (v) air transport (including Schiphol airport, ground-handling services); (vi) activities related to the port of Rotterdam; (vii) banks with registered offices in the Netherlands; and (viii) certain financial market infrastructure providers, such as trading platforms (additional services may be designated as "vital" by decree).
- Operators of business campuses, defined as undertakings that manage a property on which a collection of companies operate and where public and private actors collaborate on technology and applications that are of economic and strategic importance to the Netherlands.
- Companies active in sensitive technologies, which comprise military items (as listed on the EU common military list) and, with very limited exceptions, dual-use items that fall under the EU Dual-Use Regulation 2021/821. By ministerial decree, certain specific technologies have been designated as "highly sensitive technology", these are: quantum technology, photonic technology, semiconductor technology and high-assurance products. Moreover, currently an amendment is in consultation which (if accepted) would also include (certain subcategories of) biotechnology, artificial intelligence, advanced materials and nanotechnology, sensor and navigation technology, and nuclear technology with medical uses as highly sensitive technology.

Under the Vifo Act, a notification obligation exists for both the acquirer and the target company when there are relevant acquisition activities in these target companies through which the acquirer obtains de jure or de facto control over the target company. Moreover, for companies active in designated 'highly sensitive technology' in the Netherlands, the triggering threshold is lowered to "significant influence", rather than control. Significant influence can exist if as little as 10 per cent, 20 per cent or

25 per cent of voting rights can be exercised or if there is a right to appoint or dismiss one or more board members.

The notification requirement is suspensory such that the stand-still obligation prohibits parties from closing a transaction prior to having received a clearance decision, or before the statutory review period lapses. In the case of public bids for a listed target company, the notification shall be made simultaneously with an announcement of the public bid under the FSA and the Decree. Furthermore, a mandatory bid shall not be declared unconditional before the relevant party is notified that no review is required, or a review has been completed.

Not notifying transactions that should be notified or implementing notified transactions before having obtained approval, can lead to ex officio review proceedings, interim orders and significant administrative fines of up to 10 per cent of the relevant undertaking's turnover. In the event that the BTI concludes that the investment poses a risk to national security, the BTI may order the parties to the transaction to accept remedies, or even prohibit the transaction.

There is also legislation being prepared specifically aimed at ensuring national security in the defense sector, through the so-called Defense Resilience and Safety Related Sector Act (*Wet weerbaarheid defensie en veiligheid gerelateerde industrie*). This act foresees, *inter alia,* the introduction of a new sector-specific investment screening regime for certain undertakings active in the Dutch defense sector. However, it has not yet been implemented.

2.8 Foreign Subsidies Regulation

The Foreign Subsidies Regulation ("**FSR**") came into force on 12 January 2023. One of the main objectives of the FSR is tackling competition-distorting aid provided by non-EU governments.

Under the FSR, concentrations must be reported to the European Commission if the following two thresholds are met:

(a) **Revenue Threshold**: At least one of the merging parties (in the case of a merger), the target company (in the case of an acquisition), or the joint venture is established in the EU and achieved a turnover of at least EUR 500 million in the previous financial year.

(b) **Financial Contributions Threshold**: The involved companies have collectively received more than EUR 50 million in financial contributions from non-EU countries in the three years preceding the agreement's closing, the public takeover bid announcement, or the acquisition of a controlling interest. This applies to: (i) in the case of an acquisition: the buyer(s) and the target company, (ii) in the case of a merger: the merging companies, (iii) in the case of a joint venture: the joint venture partners and the joint venture itself.

Moreover, bids in response to tenders organized by EU Member State contracting authorities must be notified where:

- the tender has a value of at least EUR 250 million (and, in case the tender is divided in multiple lots, the aggregate value of the lots applied for is at least EUR 125 million); and
- the bidder (and related undertakings including its main subcontractors and suppliers) have received financial contributions of EUR 4 million from a single third country in the three years prior to the notification.

The notion of financial contribution as defined in the FSR is extremely broad. In essence, it covers three main categories:

- The transfer of funds or liabilities: this includes all types of direct transfers of funds (such as grants, fiscal incentives, loans, capital injections/increases, the set-off of operating losses, debt forgiveness), as well as potential direct transfers of funds (e.g., loan guarantees or credit lines).
- The foregoing of revenue that is otherwise due or the granting of special or exclusive rights: this includes different tax or VAT incentives (investment tax credits, R&D credits, etc.), tax exemptions (e.g., exemption from local property tax, patent boxes), reductions in social security contributions, as well as the granting of exclusive concessions without appropriate remuneration (e.g., mining rights or land use rights).
- The provision or purchase of goods or services: this includes any sale to or purchase from a public entity (including private entities which are ultimately controlled by a public authority) regardless of whether the sale/purchase was the subject of a tender procedure or concluded at arms' length/market conditions (e.g., public utility bills for gas, water and electricity, payments for postal services, waste collection and other public services).

A 'financial contribution' is broader than a 'foreign subsidy' and does not need to be specific or provide an advantage. The European Commission can require non-notifiable concentrations to be reported if foreign subsidies are suspected within three years prior.

It should be noted that notifications are mandatory and have suspensory effect, which means that a concentration cannot be implemented, or a large public tender cannot be awarded, before obtaining approval from the European Commission. Failure to comply can attract fines of up to 10% of global revenues.

Reporting foreign subsidies involves a phase 1 assessment (25 working days for concentrations, 20 for public procurement) and a phase 2 investigation (up to 90 working days for concentrations, 110 for public procurement). Parties must identify financial contributions from non-EU governments in the three years before a transaction or tender under the FSR.

3. Before a Public Takeover Bid

3.1 Acquisition of shares of a company listed in the Netherlands

Investors can acquire shares in a company which is listed on a regulated market in the Netherlands through a variety of methods. Such methods include: stock market purchases, OTC transactions and one-on-one block purchases. Depending on the size of the shareholding in the company, an investor must publicly disclose its shareholding. The AFM should be notified when a substantial holding or short position consequently reaches, exceeds or falls below a threshold. This can be caused by the acquisition or disposal of shares by the shareholder or because the issued capital of the issuing institution is increased or decreased. The thresholds are: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%.

3.2 Confidentiality, due diligence and insider dealings

The pre-offer negotiations between the target company and the offeror are usually kept confidential, so as not to frustrate the offer at a precarious stage. In a friendly offer situation, the offeror will typically conduct a high level due diligence. Simultaneously, the offeror and the target company will start negotiating the terms of the offer. These terms will be incorporated in the merger protocol. Due diligence and offer negotiations will be preceded by the signing of NDAs.

As described in 2.4, the principle of market transparency requires the disclosure of any Inside Information in order to prevent interference with the target company's share price and to reduce the opportunity to conduct insider dealings. Inside Information must be disclosed to the public by the target company as soon as possible. The disclosure of Inside Information may be delayed by a target company at its own discretion, on its own responsibility, if all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the target company;

(b) the delay of disclosure is not likely to mislead the public; and

(c) the target company must be able to ensure the confidentiality of the information.

If one of these three conditions is not met, the Inside Information has to be made public.

If an issuer has delayed the disclosure of Inside Information, it must inform the AFM immediately after the Inside Information has been disclosed to the public that the disclosure of information was delayed and, if requested by the AFM, shall provide a written explanation detailing how the conditions as set out above were met.

Furthermore, any company with securities listed within the EEA must maintain an insider list. This sets out all persons who have access to Inside Information and who are working for the company pursuant to a contract or otherwise performing tasks through which they have access to Inside Information.

In order to prevent insider dealing, a standstill agreement with the target company is usually entered into. Such standstill obligations can also be combined with an NDA.

4. Effecting a Takeover

4.1 Types of offers

- Full offer – an offer for the entire issued share capital of a listed company. This is the most commonly used form of public offer;
- Partial offer – an offer to acquire less than 30% of the voting rights of a target company;
- Tender offer – an offer whereby the shareholders are invited by the offeror to state, on an individual basis, the consideration which they wish to receive in exchange for their shares. The offeror may only acquire less than 30% of the voting rights of a target company; and
- Mandatory offer – an offer whereby the offeror is required to make an offer for all remaining shares of the target company if the offeror has acquired 30% or more of the voting rights in the target company.

Certain situations are exempted from the requirement to make a mandatory offer. These include, among others, a shareholder having a 30% interest in the company prior to an IPO. If a shareholder that has a 30% interest in the company is able to reduce its shareholding within the so-called "30-day grace period", it will not be required to make a mandatory offer.

4.2 Launching the offer

In a friendly offer situation, the offer process usually starts with a joint public announcement by the offeror and the target company. The announcement will contain the intention to make an offer. Such announcement usually follows once the offeror and the target company have executed the merger protocol.

The first public announcement in a friendly or hostile offer marks the formal announcement of the offer and, from the moment the announcement is made, strict rules on the disclosure of information about the offer apply. In addition, a timetable within which the offer must be made and completed will commence. This first public announcement is also referred to as the "initial announcement".

Under the Public Offer Rules, the offeror is not allowed to make an offer for securities listed on a regulated market in the Netherlands before having an offer document approved by the AFM or a similar supervisory market authority in another EU/EEA Member State. The definition of securities as defined under the FSA includes shares, DRs, rights equivalent to transferable shares, bonds and other transferable debt instruments.

The offer document must at least touch upon the following information, as worked out in the Decree:

- The offer price, including a substantiation thereof.
- The conditions to completion of the offer, such as:
- the offer acceptance threshold, usually somewhere between 80% and 95%;
- regulatory approvals (anti-trust);
- no competing offer;
- no withdrawal of the target company board's support;
- no material adverse change; and
- no court orders or investigations having been started that hinder the offer or make it impossible to complete.
- The tender acceptance period (*aanmeldingstermijn*), during which shareholders can tender their securities. For a full offer, the tender acceptance period has to be between eight and 10 weeks. For a partial or tender offer, this period can be between two and 10 weeks. The tender acceptance period for a full, partial or tender offer can be extended only once, for a period between two and 10 weeks.
- Rationale behind the offer and the strategic plans for the target company post-acquisition.
- Financial information about the offeror and the target company.
- If a fairness opinion has been obtained, this must be included in the offer document.
- In the case of a friendly offer, the main terms of the merger protocol must be described in the offer document.

4.3 Conditional and unconditional offers

The conditions to the completion of an offer must be announced no later than at the launch of the offer, i.e., when the approved offer document has been made publicly available. As previously mentioned, these conditions must be included in the offer document. If it becomes clear that one or more of the conditions will not be met, e.g., the acceptance threshold has not been met, the offeror must make a public announcement describing the possible consequences for the offer. In such case, the offeror can decide to not declare the offer unconditional or waive those conditions and declare the offer unconditional. A mandatory offer should be unconditional and can therefore not be made dependent on the fulfilment of such conditions.

The offer cannot be withdrawn once the offer document is made publicly available. Amendments to or revisions of the offer are not possible, unless the AFM has given its approval, e.g., in case of errors, if it concerns an extension of the offer acceptance period or a change in the offer price. The offeror must complete the offer unless one of the offer conditions has not been met.

4.4 Offer price

The offer price can be in cash or securities, or a combination thereof. If it concerns a mandatory offer, the consideration can be cash and securities, albeit that if it includes securities, these must be liquid and traded on a regulated market. Furthermore, the offer price in a mandatory offer must be "fair" (*billijk*). A fair price is defined as the highest price that the offeror, or persons acting in concert with the offeror, has paid for the same kind of securities in the year prior to the announcement of the mandatory offer. If the offeror did not acquire any securities in the year prior to the announcement of the mandatory offer, the average share price as quoted on the stock exchange during that preceding year will be deemed "fair".

4.5 The certain funds announcement

The offeror has to publish a "certain funds" announcement when the offer document is submitted to the AFM for approval (at the latest). The certain funds announcement must include a detailed description setting out the manner in which the offeror has secured the payment of the offer price. The AFM assesses whether the public announcement regarding the certain funds rule contains the required accurate description and necessary transparency, and there is no requirement to demonstrate that the offeror has the necessary funds in place, for example, by submitting a commitment letter to the AFM.

4.6 Informative EGM

No later than on the sixth business day before the expiry of the tender acceptance period, the target company must hold an extraordinary general meeting of shareholders, during which the offer will be discussed with the target company's shareholders. There will not be a vote on the offer, as such. However, the shareholders' meeting is requested to vote on certain matters relating to the post-offer period and integration (e.g. the amendment of the articles of association, the change of the management board's composition, the pre-wired asset sale and liquidation).

4.7 Friendly versus hostile takeovers

Most public offers in the Netherlands are friendly and have the consent of or are recommended and supported by, the management board of a target company. A friendly public offer is generally more successful than a hostile or unsolicited public offer. At the beginning of a friendly offer, the offeror and target company will usually enter into a non-disclosure agreement ("**NDA**") and a standstill agreement, upon which the terms of the merger protocol will be negotiated and due diligence will be conducted. Furthermore, the boards of the target company recommend the public offer to the shareholders for acceptance. However, during a hostile offer, the offeror will not be given the opportunity to perform due diligence and its offer will not be recommended. In a hostile situation, the boards of the target company may seek to eliminate the hostile offer by invoking a defense measure or seeking an alternative offeror.

In its judgment of 29 May 2017 (AkzoNobel v. Elliot), the Enterprise Chamber ruled - in line with case law - that the determination of the strategy of a company and its enterprise is an affair of the management board under supervision of the supervisory board. This also applies to the company's response to a (hostile) takeover proposal. The management board does not have an obligation to consult with its shareholders prior to its response to the bidder. However, the board of management remains accountable to shareholders for its decision-making conduct.

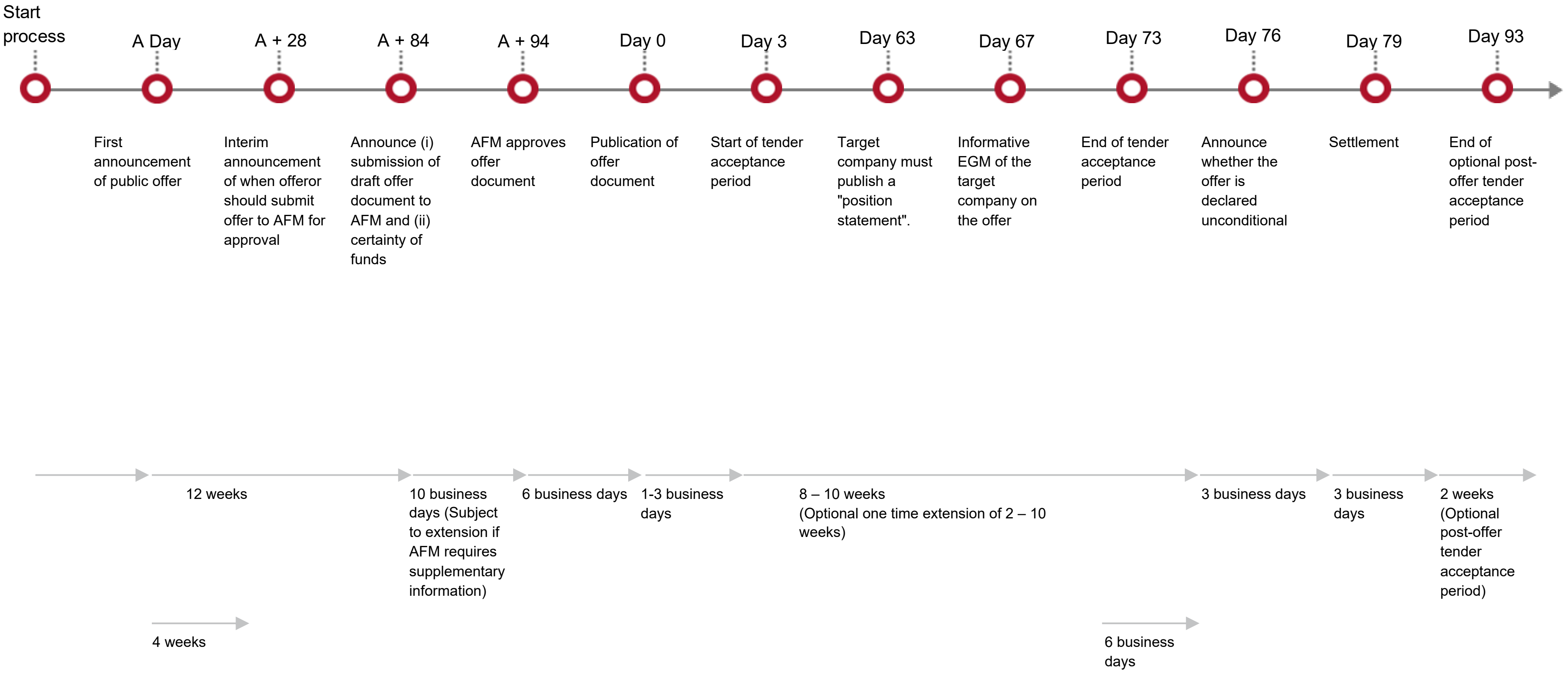
4.8 Competing offers

In the event of a serious competing offer, the management board of the target company is obligated to at least consider such offer and, under certain circumstances, provide the competing offeror with similar information as provided to the friendly offeror. In practice, the merger protocol will usually define under what circumstances a competing offer is considered a superior offer. If a competing offer is superior, the boards of the target company may revoke their support for the friendly offer and choose to support and recommend the superior offer. If the target company chooses a superior offer, this may trigger the payment of a break fee, see 6.5.

5. Timeline

Set out below is an indicative timeline for a public offer.

Public offer (indicative timeline)



Start process	
A Day	First announcement of public offer
A + 28	Interim announcement of when offeror should submit offer to AFM for approval
A + 84	Announce (i) submission of draft offer document to AFM and (ii) certainty of funds
A + 94	AFM approves offer document
Day 0	Publication of offer document
Day 3	Start of tender acceptance period
Day 63	Target company must publish a "position statement".
Day 67	Informative EGM of the target company on the offer
Day 73	End of tender acceptance period
Day 76	Announce whether the offer is declared unconditional
Day 79	Settlement
Day 93	End of optional post-offer tender acceptance period

12 weeks

10 business days (Subject to extension if AFM requires supplementary information)

6 business days

1-3 business days

8 – 10 weeks (Optional one time extension of 2 – 10 weeks)

3 business days

3 business days

2 weeks (Optional post-offer tender acceptance period)

4 weeks

6 business days

6. Takeover Tactics

6.1 Stakebuilding

One of the most important aspects of a successful offer is securing its outcome. Therefore, in the preparation of a public offer, stakebuilding is key to strengthening the position of the offeror and, to the extent possible, securing a fruitful outcome.

When an offeror considers stakebuilding, the following should be taken into account:

- The Market Abuse Rules – The offeror may not acquire securities in the target company if it is in the possession of Inside Information. Knowledge about its own intention to make an offer is not considered to be Inside Information. However, if the offeror engages in negotiations with the target company with respect to a contemplated public offer, and this information is not available in the public domain, the offeror is considered to be in possession of Inside Information. This prevents the offeror from acquiring securities in the target company. While carrying out due diligence, stakebuilding is considered to be a complex matter, even though it is not prohibited as such. This is due to the fact that, if due diligence results in the offeror having access to Inside Information on the target company, the offeror would be prohibited from acquiring such shares. Therefore, stakebuilding commences the day that the initial joint announcement about the offer has been made.

- Transparency and disclosure rules – If the offeror acquires a substantial holding in the target company, it is required to forthwith notify the AFM of such substantial holding. A substantial holding is defined as the holding of at least 3% of the shares or the ability to vote on at least 3% of the total voting rights in relation to such shares. Any person who directly or indirectly acquires or disposes of an interest in the share capital or voting rights of the target company must give notice to the AFM without delay if, as a result of such acquisition or disposal, the percentage of capital interest or voting rights held by such person reaches, exceeds or falls below the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%. The AFM maintains a public register in which all shareholders with a substantial holding are registered.

  When the offeror acts in concert with a third party by means of an agreement, the interests of the parties acting in concert must be aggregated for the purpose of determining whether a disclosure obligation exists.

  Furthermore, any shares of the target company which are purchased in the period between the initial announcement of the offer and the launch of the offer through the publication of the offer document must be included in the offer document. In addition, during the period of the offer, i.e., from the launch of the offer until it has been declared unconditional, the offeror must notify the AFM of the shares it acquired in the target company, this can be announced on a daily basis. The AFM makes such information public.

  Additionally, the Netherlands has implemented a FDI screening process for national security purposes, see 2.7. This screening applies to acquisitions or stakebuilding that exceed specific thresholds in Dutch targets by any buyer.

6.2 Put-up or shut-up rule

A target company wishing to obtain clarity on the intentions of a potential offeror can request the AFM to order that party to make a clear public statement as to whether it intends to launch an offer or not. This request can be made if the potential offeror has given the impression that it is preparing a public offer by certain of its actions or disclosures, but has not clarified its intentions. These actions or disclosures should be more substantive than rumors, but do not need to consist of detailed information indicating a public offer. The AFM will make a put-up or shut-up request if the potential target company is negatively affected by any uncertainty surrounding the potential offer.

If the potential target company's request for an order is granted, the party that gave the impression of preparing an offer must clarify its position within six weeks of receiving such order from the AFM. If the potential offeror announces its intention to make a public offer on the target company, the Public Offer Rules will apply. If the potential offeror withdraws, the shut-up rule applies. This results in the potential offeror being prohibited from making a public offer for six months following such withdrawal. This period is nine months if the potential bidder fails to comply with the 'put up or shut up' rule imposed by the AFM. Additionally, during this period, the bidder must not place themselves in a position to gain significant control over the target company.

6.3 Irrevocable undertakings by major shareholders

Another effective means to secure a successful offer is to obtain an undertaking from major shareholders of the target company to tender their shares in the target company to the offeror ("**Irrevocable Undertakings**"). Usually, major shareholders are approached before any intention to make an offer has been publicly disclosed. This means that Inside Information is shared with a third party. However, the MAR permits Irrevocable Undertakings to be obtained from major shareholders, provided that the willingness of such shareholders to tender their shares is reasonably required for the decision to make the offer. Approaching major shareholders in this way is known as taking market soundings. Furthermore, as these shareholders will gain access to Inside Information, non-disclosure and standstill agreements are usually entered into with such shareholder before it is approached to enter into an Irrevocable Undertaking.

6.4 Protective measures

Under Dutch law, it is possible for companies to protect themselves against hostile takeovers. The most common protective measure is the issuance of protective preference shares to an independent special purpose foundation. Although this mechanism cannot be used to block a possible hostile public offer altogether, the foundation will hold such a significant shareholding that it will impede the offeror in acquiring, to a great extent, full control over the company. The independent foundation may only hold more than 30% in the listed company for a maximum period of 2 years from when the hostile public offer is first announced. Following this period, the independent foundation must make a public offer.

Another protective measure is the issue, by a Dutch listed company, of all its shares to a foundation, which in turn issues DRs to the shareholders. The holders of DRs do not have the right to vote on the underlying shares, as the foundation holds the voting rights on these shares. In a period when there is no hostile situation, the foundation is required to issue proxies for a shareholders' meeting to those holders of DRs that have so requested.

Furthermore, priority shares are occasionally issued to one or more shareholders. The priority shares could, for example, be issued to the controlling shareholder of the company pre-IPO or to a "friendly" foundation, i.e., a foundation whose board of directors are the same as that of the listed company. Priority shares are a separate class of shares to which certain special controlling rights are attributed.

6.5 Break fees (protecting the deal)

It is common practice for parties to agree on a break fee in the merger protocol. A break fee is a penalty to be paid by the target company or the offeror (reverse break fee) if, under certain specific circumstances, the offer is unsuccessful, e.g., the target company accepts a competing offer or the offeror fails to obtain regulatory approval for the offer. Dutch law does not provide for rules on the requirements for a break fee. Nevertheless, the rule of thumb is that a break fee of approximately 1% of the deal value is considered reasonable.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 The squeeze-out procedure

If the offeror has acquired at least 95% of the issued shares in the target company, it may initiate statutory squeeze-out proceedings. Dutch statutory law provides for two different squeeze-out procedures, a general squeeze-out procedure and a specific squeeze-out procedure following a public offer. The two proceedings are similar, but there is one distinct difference in relation to the squeeze-out price.

Under the public offer squeeze out rules, a shareholder holding at least 95% of the shares and voting rights can initiate a squeeze-out procedure in order to acquire the remaining shares. In the event that the shares are divided into separate classes of shares, the shareholder initiating the procedure can only do so if it holds 95% of the shares and voting rights in each class. The squeeze-out procedure is started by a shareholder holding at least 95% of the shares and voting rights filing a claim with the Enterprise Chamber within three months after the offer acceptance period and the post-acceptance period has passed. In the public offer squeeze-out procedure, if following the public offer the shareholder acquired at least 90% of the shares that were subject to the voluntary public offer, the offer price will be considered a fair price payable to the minority shareholders. In the general squeeze-out procedure, this is not necessarily the case.

In this context, if the squeeze-out procedure is initiated shortly after the public offer, there will be no difference between the determination of the squeeze-out price in a normal or in a public offer squeeze-out as in both cases it will be the offer price. This will apply even more when none of the minority shareholders oppose the offer price.

7.2 Alternative methods

In addition to squeeze-out proceedings, the offeror can choose between several alternative methods to ultimately gain full control over the target company. Minority shareholders that have not registered their shares under the offer can, after completion thereof, be diluted by way of asset deals, liquidation of the target company, legal mergers and restructurings. Notwithstanding the aforementioned, use of the aforementioned methods is not permitted with the sole purpose of squeezing out the remaining shareholders. There should always be a business rationale for using one of these methods, which must be properly disclosed in the offer document.

8. Delisting

After the offeror has acquired at least 95% of the shares in the target company, it may decide to delist the target company from Euronext Amsterdam. For obvious reasons, a delisting would be desirable for the offeror in order to allow integration and avoid the need to comply with regulations applicable to listed companies. Delisting requires termination of the listing agreement with Euronext Amsterdam. After obtaining a positive decision from Euronext Amsterdam on the application for delisting, the delisting will take place on the 20th trading day after publication of the decision.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Rebecca C.J. Kuijpers-Zimmerman in the Amsterdam office is the most appropriate contact within Baker McKenzie for inquiries about public M&A in the Netherlands.

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People's Republic of China

1. Overview

In the PRC, public takeovers are quite frequent. A purchaser can acquire the equity of a public company by way of a voluntary or mandatory tender offer, a direct or indirect acquisition by agreement, on the primary market, or on a secondary market such as the Shanghai Stock Exchange or the Shenzhen Stock Exchange. The PRC regulates public takeovers under the laws and regulations described in 2 below. Since takeover by way of a tender offer has more requirements in terms of procedures and disclosure, the following focuses on this type of takeover.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles governing public takeover bids can be found in:

- Law of the People's Republic of China on Securities ("**Securities Law**");
- Measures for the Administration on Acquisition of Listed Companies (as amended on 20 March 2020) ("**Acquisition Measures**");
- Measures for the Administration of Material Asset Reorganization of Listed Companies (as amended on 17 February 2023).

The Securities Law sets out the general rules on public takeover bids and provides the disclosure requirements. The Acquisition Measures provide additional specific regulations for public takeover bids.

2.2 Other rules

While the Securities Law and Acquisition Measures contain the main legal framework for public takeover bids in the PRC, additional rules should be followed when preparing or conducting a public takeover bid. These include:

(a) The four opinions issued by the China Securities Regulatory Commission ("**CSRC**"), the governing body of public companies, which set out guidance for some provisions in the Acquisition Measures; and

(b) Guidelines issued by Shenzhen Stock Exchange and Beijing Stock Exchange, which contains the provisions on public company takeovers of public companies listed on the Shenzhen Stock Exchange and Beijing Stock Exchange.

2.3 Supervision and enforcement by the CSRC

Public takeover bids are subject to the supervision and control of the CSRC. The CSRC is the principal securities regulator in the PRC.

The CSRC has a number of legal tools to supervise and enforce compliance with the public takeover bid rules. It can conduct regulatory talks, issue warning letters, order suspension or cessation of the acquisition, or take other regulatory measures.

2.4 General principles

The following principles apply to public takeovers in the PRC:

(a) Shareholders of the same type of shares should be treated equally during a tender offer;

(b) The minority shareholders must be protected, including by the use of mandatory tender offers and the prohibition of insider trading; and

(c) A duty to disclose shareholdings upon reaching certain thresholds.

2.5 Foreign investment provisions

(a) Industry-related restrictions

The PRC National Development and Reform Commission ("**NDRC**") and the PRC Ministry of Commerce ("**MOFCOM**") jointly promulgated the *Catalogue of Encouraged Foreign Investment Industries (2022)* ("**Catalogue**"), effective as of 1 January 2023, which set out a list of industries in which foreign investment is encouraged. On 6 September 2024, the NDRC and MOFCOM jointly released the *Special Administrative Measures for Access of Foreign Investment (Negative List) (2024)* ("**Negative List**"), effective as of 1 November 2024, which lists industries that are restricted or prohibited for foreign investment.

Foreign investment into restricted industries is subject to an approval requirement while foreign investors are not allowed to invest in any prohibited industries such as compulsory education, press and publishing, radio and television broadcasting, transmission, production and operation.

All foreign investment should be carried out by reporting the investment information to the relevant commercial authorities based on the Foreign Investment Law, effective as 1 January 2020. Detailed requirements for reporting are stipulated in the Measures for the Reporting of Foreign Investment Information with effect from 1 January 2020.

(b) Foreign investment in A-share listed companies

Foreign investors must obtain the A-share stock of A-share listed companies either by way of:

(i) obtaining QFII or RQFII qualifications;

(ii) strategic investment by foreign investors, which is subject to the Measures for the Administration of Strategic Investment in *Listed Companies by Foreign Investors* ("**Strategic Investment Measures**", effective as of 31 January 2006, and revised in 2024) and *Announcement No.15 [2023] of the China Securities Regulatory Commission-Announcement on Issuing the Opinions on the Application of the Applicable Provisions of Articles 9, 10, 11, 13, 40, 57, and 60 of the Measures for the Administration of Registration of Securities Offering by Listed Companies-Opinions No. 18 on the Application of Securities and Futures Laws* (effective as of 17 February 2023). The Strategic Investment Measures revised in 2024 has removed the requirement of prior approval by MOFCOM before the strategic investment, and replaced it with a requirement for the foreign investor or listed company to report the investment information to MOFCOM after the completion of the strategic investment; or

(iii) obtaining a listing of Global Depository Receipts on an overseas stock exchange under the Stock Connect Scheme.

3. Before a Public Takeover Bid

3.1 Disclosure of shareholdings

Shareholding disclosure rules apply before, during and after a public takeover bid.

According to these rules, a bidder must announce a change in shareholding in the target company if it exceeds the applicable disclosure thresholds. The relevant disclosure thresholds are 5% and each increase or decrease of 1% of its stake.

When calculating its shareholding stake, the bidder must include shares held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.4 below).

3.2 Target company disclosures

The target company must continue to comply with the general rules on disclosures. For example, before a shareholder announces the change of its stake, the relevant information is disseminated in certain media or if the transaction in the shares of the company is seen as abnormal, the target company must make an announcement in a timely manner.

3.3 Due diligence

When the bidder intends to acquire the target company shares via a tender offer, the bidder must engage a financial adviser, sponsor or law firm (hereinafter collectively referred to as 'intermediary agencies') to act as advisors and have them conduct due diligence and issue reports based on Acquisition Measures and Strategic Investment Measures. Meanwhile, the target company's board of directors shall conduct an investigation into the bidder and engage an independent financial adviser to issue professional opinions.

3.4 Acting in concert

Persons "act in concert" when:

- there is an equity control relationship between the investors;
- the investors are controlled by the same subject;
- an investor's directors, supervisors, or senior management personnel take the posts of directors, supervisors, or senior management personnel of another investor;
- an investor is an equity participant of another investor, which may have a major impact on the major strategy of the equity participating company;
- a legal person or any other organization other than the bank or a natural person provides the capital financing for the investor to obtain relevant shares;
- there is a partnership, cooperation, joint operation, or other economic interest relationship between the investors;
- a natural person holding more than 30% stake in an investor holds shares in a listed company also held by the investor;
- any person who assumes the post of a director, supervisor, or senior manager in an investor holds shares in a listed company also held by the investor;

- a natural person holding more than 30% stake in an investor, or a director, supervisor, or senior manager in an investor, and their parents, spouses, children, children's spouses, spouses' parents, siblings, sibling's spouses, spouses' siblings and their spouses hold shares of the same listed company with the investor;
- a director, supervisor, or senior manager in a listed company holds shares of the company concerned concurrently with the aforementioned relatives, or holds shares of the company concerned concurrently with an enterprise directly or indirectly controlled thereby or by the aforementioned relatives;
- a director, supervisor, or senior manager, and staff members of a listed company and the legal person or other organization under its control holds the shares of the company concerned; or
- there are other affiliations between the investors.

The concept of persons acting in concert is especially relevant in relation to disclosure duties and mandatory takeover bids. A group of persons acting in concert will be required to carry out a mandatory takeover bid if that group acquires 30% of the shares in the target company and continues acquiring more of the target company's shares even though no individual group member holds more than 30%, unless it meets the conditions for "exemption from adopting a tender offer" as prescribed in Chapter VI of the Acquisition Measure.

4. Effecting a Takeover

4.1 Types of public takeover bid

(a) Voluntary tender offer

The bidder can voluntarily adopt a tender offer to all shareholders for all or part of their shares.

(b) Mandatory tender offer

A mandatory tender offer is triggered in the following situations:

- A person or group of persons acting in concert as a result of an acquisition of shares, holds directly or indirectly more than 30% of the shares of the target company and continues to increase the shareholding;
- A person plans to acquire more than 30% of a target company by way of an agreement (the part of the shares exceeding the 30% shall be acquired by tender offer); and
- A person who is not a shareholder but who has equity interests in a listed company through investment, agreement and other arrangements exceeds 30% ownership of the target company's issued shares.

4.2 Exemption from adopting a tender offer

The bidder may be exempt from the tender offer requirement if:

- the share transfer is conducted between different subjects under the control of the same actual controller and will not result in change of the actual controller of the target company;
- (i) the target company faces severe financial difficulty; (ii) the reorganization plan for saving the company as proposed by the purchaser is approved by the general

meeting of shareholders of that company; and (iii) the purchaser undertakes not to transfer its shares within 3 years;

- the gratuitous transfer, change, or merger of state-owned assets carried out upon approval of the government or the administrative department of state-owned assets causes the equity held by a person in a listed company to exceed 30% of the issued shares of that company;
- a listed company repurchases shares from specific shareholders according to the determined price approved by the general meeting of shareholders, which results in a reduction of share capital, thereby rendering the shares held by the person in the company exceeding 30% of the issued shares of that company;
- the shares held by a person in a listed company exceeds 30% of the issued shares of that company due to the issuance of new shares to such person by the listed company upon approval by the non-affiliated shareholders of the general meeting of shareholders, the investor commits not to transfer such new shares issued to itself within 3 years and the general shareholders' meeting approve the exemption from tender offer by the investor;
- the equity held by a person in a listed company reaches or exceeds 30% of the issued shares of that company and, after 1 year from such occurrence, the increase of shares in that company within each 12 month period does not exceed 2% of the issued shares of that company;
- the equity held by a person in a listed company reaches or exceeds 50% of the issued shares of that company and the investor continuing to increase its shareholding does not affect the status of the company as a listed company;
- the lawful engagement in underwriting, loans and other businesses by a securities company, bank, or other financial institution causes the equity held by that securities company, bank, or other financial institution to exceed 30% of the issued shares in a listed company, and that securities company, bank, or other financial institution has conducted no act and has no intent to actually control the company and instead proposes to transfer the relevant shares to non-affiliated parties within a reasonable time;
- the equity held by a person in a listed company exceeds 30% of the issued shares of that company due to inheritance;
- the equity held by a person in a listed company exceeds 30% of the issued shares of that company due to share repurchase in accordance with a securities repurchase securities agreement, and the voting rights of the subject shares is not transferred during the term of the agreement;
- the equity held by a person in a listed company exceeds 30% of the issued shares of that company due to the recovery of the voting rights of the preferred shares held by the person in accordance with the law; or
- other circumstances determined by the CSRC apply.

4.3 The price and the proportion of shares in a tender offer

- If a bidder acquires the shares of a listed company by a tender offer, the proportion of shares to be acquired shall not be lower than 5% of the issued shares of that listed company.

- The bidder is in principle free to determine the price and the form of consideration offered to the target shareholders:
- The offered price may be paid in cash, securities or a combination of both, except in the following circumstances:
  - The purchaser shall pay the acquisition price in cash if a bidder sends a general tender offer (i) for the purpose of delisting a listed company or (ii) due to its failure to meet the condition for exemption from adopting a tender offer; or
  - If the bidder elects to pay the takeover price in transferable securities, it shall also offer the shareholders of the target company a cash alternative to choose.
- The offered price for the same share class shall not be lower than the highest price paid by the bidder for that share class within six months before the brief announcement is made of the tender offer.
- Shareholders that hold the same share class shall be treated equally.

5. Timeline

The table below contains an overview of the main steps in a tender offer process under PRC law.

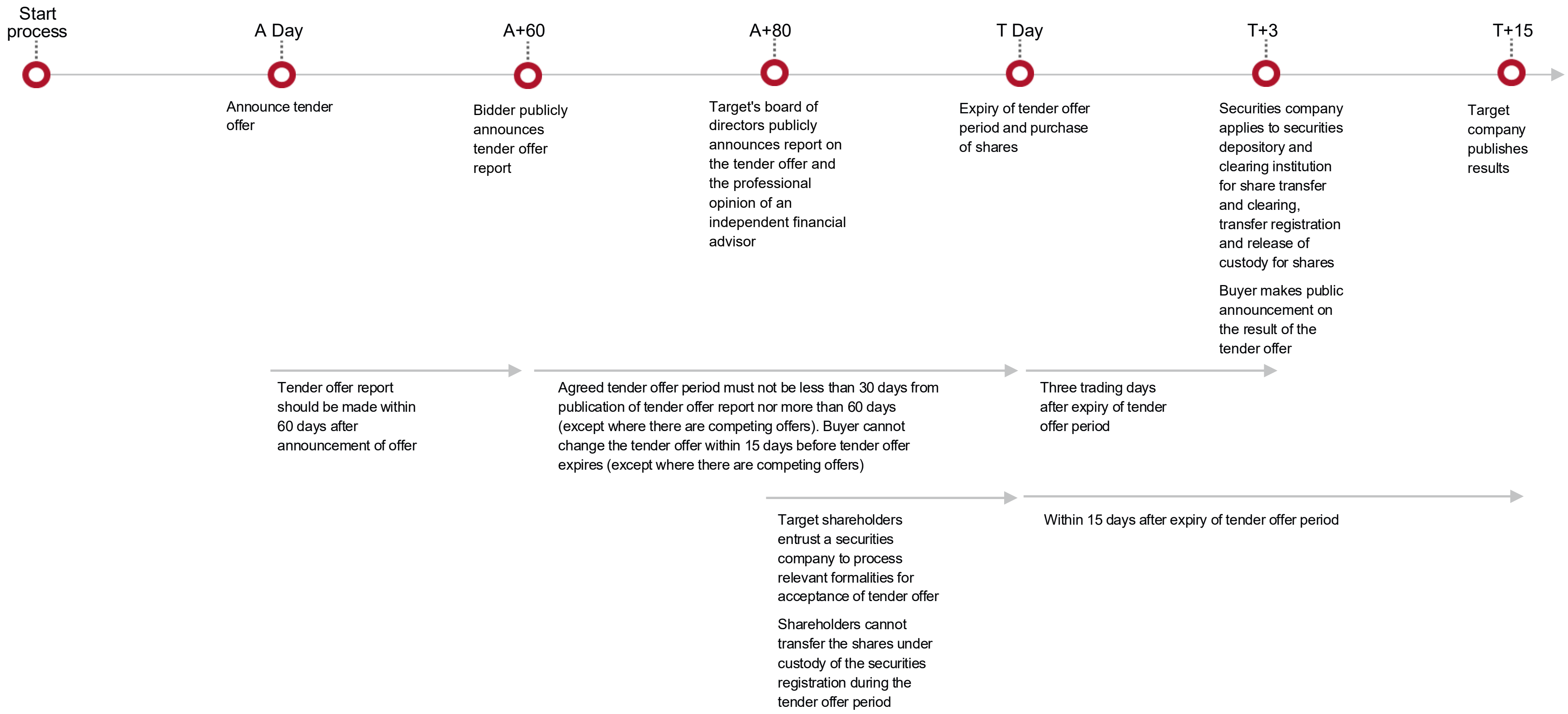
Step
1. Preparatory stage: • The purchaser prepares the tender offer report. • Engage the intermediary agencies. • Notify the target company. • Issue a brief announcement on the summary of the tender offer report. • Provide at least one of the following arrangements as a guarantee: ◦ if the purchaser pays the acquisition price by cash, it should deposit not less than 20% of the total purchase price into the bank designated by the securities depository and clearing institution. If the purchaser pays the acquisition price by securities listed in a securities exchange, the purchaser should place all the securities to be used for the payment in the custody of the securities depository and clearing institution, except where the listed company issues new shares; ◦ bank letter of guarantee for the price required for the tender offer; or ◦ written commitment issued by the financial adviser for taking joint and several guarantee liability.
2. Purchaser publicly announces the tender offer report: • The purchaser should make a tender offer report within 60 days after the announcement of the tender offer. Otherwise, the purchaser should notify the target company thereof on the working day following the expiry of the time limit and make

Step	
	an announcement thereof. It should then make an announcement every 30 days until the public announcement of the tender offer report is made. • The period of acquisition agreed upon in the tender offer shall not be less than 30 days and shall not exceed 60 days, except for any occurrence of competing tender offers. • Within the acceptance period agreed upon in the tender offer, the purchaser shall not cancel its tender offer. • Within 15 days before the tender offer expires, the purchaser shall not change the tender offer except for any occurrence of competing tender offers. • Competing tender offers can be made before expiry of the time limit of the first tender offer.
3.	The duties of the target company's board of directors are to: • Conduct due diligence on the bidder and engage an independent financial adviser to give professional opinions. • Publicly announce the report on the tender offer and the professional opinions of the independent financial adviser within 20 days after the bidder announces the tender offer report.
4.	Once the shareholders agree to accept the tender offer, the shareholders: • must entrust a securities company to process the relevant formalities for preliminary acceptance; • may not transfer the shares under temporary custody of a securities registration and settlement institution during the period of the tender offer; and • may withdraw the acceptance of the tender offer prior to three trading days before the tender offer's expiration.
5.	Purchase the shares: • The purchaser should purchase the shares upon expiration of the tender offer period. • If the number of such shares exceeds the planned number of shares, the purchaser shall, according to the same proportion, acquire the shares of the holders who have accepted the tender offer. • In the event that the purpose of the acquisition is to delist the target company, the purchaser shall, pursuant to the conditions agreed upon in the tender offer, purchase all the shares of the shareholders who have preliminarily accepted the tender offer. • A purchaser that fails to meet the condition for exemption from adopting a tender offer and issues a general tender offer shall purchase all of the shares held by the target company's shareholders that have preliminarily accepted the tender offer.

Step	
6.	Within three trading days after the tender offer expires, the securities company shall apply to the securities registration share transfer registration, and release the temporary custody of the shares that exceed the planned proportion. The purchaser shall make a public announcement on the result of the present tender offer.
7.	If the target does not meet the listing conditions after the tender offer (see 8 below), the listing of the shares of the listed company shall be terminated. The shareholders who still hold shares of the target company have the right to sell their shares to the purchaser within the reasonable period specified in the tender offer report.
8.	The target company shall announce the results within 15 days after expiration of the period of acquisition.

Set out below is an overview of the main steps for a tender offer in the People's Republic of China.

Tender offer (indicative timeline)



Start process

A Day

Announce tender offer

A+60

Bidder publicly announces tender offer report

A+80

Target's board of directors publicly announces report on the tender offer and the professional opinion of an independent financial advisor

T Day

Expiry of tender offer period and purchase of shares

T+3

Securities company applies to securities depository and clearing institution for share transfer and clearing, transfer registration and release of custody for shares

Buyer makes public announcement on the result of the tender offer

T+15

Target company publishes results

Tender offer report should be made within 60 days after announcement of offer

Agreed tender offer period must not be less than 30 days from publication of tender offer report nor more than 60 days (except where there are competing offers). Buyer cannot change the tender offer within 15 days before tender offer expires (except where there are competing offers)

Three trading days after expiry of tender offer period

Target shareholders entrust a securities company to process relevant formalities for acceptance of tender offer

Shareholders cannot transfer the shares under custody of the securities registration during the tender offer period

Within 15 days after expiry of tender offer period

6. Takeover Tactics

In public takeovers, there are limitations on the board of directors of a public company.

The Acquisition Measures state that:

> "[D]ecisions made and measures taken by the board of directors of the target company regarding the acquisition shall be conducive to maintaining the rights and interests of the company and its shareholders. Improper barriers shall not be established to the acquisition by abusing powers, no financial assistance in any form shall be provided to the purchasers by using the resources of the company, and the lawful rights and interests of the company and its shareholders shall not be harmed."

Moreover, if the purchaser acquires the public company in a tender offer, after the purchaser makes a brief announcement but before the tender offer is completed, the target company may continue to conduct normal business activities and implement resolutions made by the shareholders' general meeting. However, the board of directors of that company shall not do anything, without approval of the general shareholders' general meeting, to cause a major impact on the company's assets, debts, rights and interests, or business operations by disposing of the company's assets, causing it to invest in other companies, adjusting its main business, providing guarantee or taking out loans, or by any other means. During the tender offer period, the directors of the target company shall not resign.

These limitations on the public company's board of directors restrict its takeover defense mechanisms.

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid:

Mechanism	Assessment and considerations
1. **Poison pill** The target company issues securities to dilute the purchaser's shares.	• The issued securities should be approved by the general shareholders' meeting, or the board of directors authorized by articles of association or the shareholders' meeting. • This should meet the conditions for the public issuance of securities. • The CSRC must approve the decision of the company to issue securities.
2. **Share buyback** Share buyback from the target company's shareholders, other than the purchaser, to decrease the number of issued shares and increase the share price.	• The share buyback is only allowed to: (1) reduce the registered capital; (2) merge with another company that holds its shares; (3) acquire its own shares for employee stock ownership plans or equity incentives; (4) acquire a shareholder's shares if the shareholder objects to a resolution made at the general meeting on the merger or division of the company; (5) acquire its own shares to convert any of its corporate bonds that are convertible into

Mechanism	Assessment and considerations
	shares; (6) maintain its value and the rights and interests of shareholders. - In item (1), more than two-thirds of shareholders present with voting rights must approve the capital decrease at a shareholders' general meeting. - In items (3), (5) and (6), the company may, pursuant to its articles of association or according to the authorization granted by the general meeting, proceed with such acquisition upon a resolution adopted at a meeting of the board of directors that is attended by at least two-thirds of all directors.
3. **Sale of crown jewels** An arrangement affecting the assets of or creating a liability for the target company. It is triggered by a change in control or the launch of a takeover bid.	- Requires prior approval by the shareholders' general meeting.
4. **White knight** Target company invites a friendly purchaser to acquire the target company to end the original purchaser's takeover bid or to drive up the price.	- As long as the target company does not violate the Acquisition Measures, this defense mechanism is allowed.
5. **Golden parachute** An agreement to compensate senior managers if the control of the target company changes.	- PRC law does not explicitly prohibit it, but the target company's board of directors may not violate the limitations in the Acquisition Measures.
6. **Cross shareholding** Cross shareholding means a public company owns shares in another public company. Once one of the companies faces a hostile takeover, the other company provides assistance to help defend against this.	- PRC law does not explicitly prohibit this.
7. **Staggered board provision** A staggered board means a board of directors whose members are grouped into classes. Each class represents a certain percentage of the total number of board positions. During each election term, only one class is open to	- PRC law does not explicitly prohibit this. - In the Company Law of the People's Republic of China, the board of directors should have 3 or more members, and the term of the board of directors shall be specified in the company's articles of association, subject to a maximum member term of 3 years. However, the

Mechanism	Assessment and considerations
elections, thereby staggering appointments to the board.	law does not state that the term for each board of directors must be the same. • The staggered board provision can be specified in the company's articles of association. • It requires more than two- thirds of all shareholders with voting rights to approve the articles of association at a shareholders' general meeting.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Upon expiration of the tender offer period but before the completion of the acquisition act, if the distribution of shares of the target company does not meet the listing conditions then shareholders who still hold shares in the target company have the right to sell their shares to the purchaser within a reasonable period as specified in the tender offer. No other rule allows squeeze-out of the minority shareholders after the completion of the takeover.

8. Delisting

The listing of a company shall be terminated by the stock exchange if it no longer meets the listing requirements as a result of the takeover. This will be the case if its publicly-offered shares are less than 25% of its total shares, or the percentage of publicly-offered shares is less than 10% of its total shares if its total share capital exceeds CNY 400 million.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within FenXun

Baker McKenzie and FenXun Partners became the first international and PRC law firms to enter into a Joint Operation in the China (Shanghai) Free Trade Zone in April 2015.

Yingzhe Wang, Zhi Bao and Guangshui Yang are the most appropriate contacts for inquiries about public M&A in the People's Republic of China.

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Peru

1. Overview

1.1 Peruvian economy

In the early 2000s, Peru experienced sustained and remarkable economic development, becoming one of the fastest growing countries while maintaining a low inflation rate. However, in the last decade, growth has been affected, to a large extent, due to international circumstances. However, local factors, mainly of a political nature, have also played a role in slowing down the country's growth.

The successful growth of Peru was caused by solid economic policies introduced by the various democratically-elected governments, sustained productivity growth, private investment and the country's integration into the world economy. These factors helped to reduce poverty and strengthen the middle class, turning the country into a popular place to invest in Latin America.

The macroeconomic development of Peru during the period from 2003 to 2013 was impressive, with a real gross domestic product (GDP) annual growth rate that averaged 6.6% (the highest rate in Latin America). However, in 2014, growth reached only 2.4%, improving at the end of 2015 to 3.3%. The slowdown was caused by external factors that lead to a decrease in real exports and foreign capital flows, as well as a reduction in the price of ores exported by Peru. After that, the growth rate experienced a slight increase, reaching 3.9% in 2016, before slowing down again in 2017 to 2.5%, rising in 2018 to 4.0% and then crunching once more to 2.3% in 2019. This last period was characterized by the political uncertainty caused by the constitutional shut down of the Congress and ongoing investigations against important political and business figures as part of Operation *Lava Jato*. Despite that being a low figure, Peru was the second fastest growing economy in Latin America during 2019, only behind Colombia, and has the economy with the lowest risk in the region, according to reports of the Peruvian Central Bank.

During 2020, the COVID-19 pandemic had an important impact on the Peruvian economy as its GDP dropped 11.0% as compared to 2019, despite the efforts of the Peruvian government to contain the spread of the virus and mitigate its impact in the economy. 2021 showed a recovery of 13.3% in comparison to the year 2020 as a result of the increase in commodity prices and the implementation of a vaccination program that allowed for restrictions impacting the economy to be progressively lifted.

In the years that followed, the political arena was marked by uncertainty due to the victory of Pedro Castillo in the presidential elections of 2021. His government was characterized by constant corruption scandals which escalated to the president attempting a failed coup in December 2022, causing his immediate removal as president and incarceration. After these events, Castillo's vice-president, Dina Boluarte, assumed and currently maintains the presidency. These events caused significant social unrest which resulted in important economic losses throughout the country. Even after the protests ended, the new government was not free of heavy criticism, with historically low approval levels.

In such an instable political context, the Peruvian economy experienced little growth during the years 2022 and 2023, with rates of 2.7% and 0.6%, respectively. A minor improvement is estimated by the Peruvian Central Bank for the last year. According to its last inflation report, Peru will reach a 3.0% rate of growth for the year 2024.

1.2 The Peruvian securities market

There are 262 entities registered in the Peruvian Public Capital Markets Registry (*Registro Público del Mercado de Valores*) with either debt or equity securities listed on the Lima Stock Exchange.

The Lima Stock Exchange also participates in the Latin America Integrated Market (*Mercado Integrado Latinoamericano* or the "**MILA**"), which attempts to integrate the stock exchange markets of Colombia, Chile, Peru and Mexico under one trading platform. Trading on the Lima Stock Exchange is primarily done on a new electronic trading system called *Millennium*, which became operational in May 2015 and has the support of the London Stock Exchange.

Furthermore, since the year 2022, the stock exchanges of Peru, Chile and Colombia have been working on the implementation of a regional and more comprehensive integration of their own. After obtaining authorizations from all competent regulators, a corporate integration of the three exchanges was effected in November 2023. As a result, all three exchanges share the same holding company under the name NUAM Exchange. Currently, the exchanges continue to work together towards the creation of a fully integrated market for the three countries.

The stock market capitalization of companies listed on the Lima Stock Exchange is currently US$185.56 billion, surpassing its pre-pandemic levels.

2. General Legal Framework

2.1 Main and complementary legal framework

The main rules and principles of Peruvian law relating to public takeover bids can be found in:

- The Peruvian Securities Market Law, approved by Supreme Decree 020-2023-EF, as amended (*Texto Único Ordenado de Ley de Mercado de Valores*).
- Tender Offer Regulations approved by CONASEV Resolution N° 009-2006-EF-94.10, as amended (*Reglamento de Oferta Pública de Adquisición y de Compra de Valores por Exclusión*).

In addition, there are a number of other regulations that need to be taken into account when considering a public takeover bid, as they are of general application and contain certain definitions that the main regulations refer to. These are the:

- Corporations Law approved by Law N° 26887, as amended (*Ley General de Sociedades*).
- Economic Group Regulations approved by SMV Resolution N° 019-2015-SMV/01 (*Reglamento de Propiedad Indirecta, Vinculación y Grupos Económicos*).
- Market Abuse Regulations approved by SMV Resolution Nº 005-2012-SMV-01, as amended (*Reglamento contra el Abuso de Mercado - Normas sobre Uso Indebido de Información Privilegiada y Manipulación de Mercado*).

2.2 Supervision and enforcement by the Capital Markets Superintendency

The Securities Market Law regulates certain securities matters such as transparency and disclosure, corporate takeovers, capital markets instruments and operations, broker-dealers and credit-rating agencies. The Peruvian Capital Markets Superintendency (*Superintendencia del Mercado de Valores* or the "**SMV**"), formerly known as the National Supervisory Commission for Securities and Companies (*Comisión Nacional Supervisora de Empresas y Valores* or "**CONASEV**"), is a governmental entity that reports to Peru's Ministry of Economy and Finance with functional, administrative, economic, technical and budgetary autonomy. The SMV has broad regulatory powers, including reviewing, promoting and making rules regarding the securities market, supervising its participants and approving the registration of public offerings of securities (including public tender offers).

The SMV supervises the securities markets and the dissemination of information to investors. It also (i) governs the operation of the Peruvian Public Capital Markets Registry, (ii) regulates mutual funds, publicly placed investment funds and their respective management companies and broker- dealers, (iii) monitors compliance with accounting regulations by companies under its supervision as well as the accuracy of financial statements, (iv) registers and supervises auditors who provide accounting services to those companies registered with the SMV, and (v) registers and supervises public offerings, exchange offers and tender offers (including takeover bids), among other types of public offerings, and in each case, monitors compliance with applicable regulations.

The SMV is also in charge of enforcing the securities markets' rules and regulations and has the power to impose fines or disqualify entities from participating in the securities markets.

In the case of acquisitions that violate the tender offer rules, the SMV may impose the following sanctions:

- Administrative sanctions constituting fines between 1 and 700 "tax units". One tax unit is set by the tax authorities as PEN 5,350 in 2025.
- Suspend the voting rights of the acquired securities.
- Require the acquirer to sell the acquired securities in the market.

However, to the extent that the SMV determines that it would be more beneficial for the market, the SMV can, at the request of the acquirer, allow the offeror to launch a tender offer for 100% of the securities.

The SMV also has the power to grant exemptions to certain tender offer regulations that would otherwise apply in a public takeover bid.

2.3 Foreign Investments Restrictions

Foreign investments are not restricted in Peru. The Peruvian Constitution grants foreign and local investors the same rights over their investments. Accordingly, the acquisitions of shares in Peruvian companies are freely permitted, both through the stock market and over the counter operations. Hence, the purchase by a foreign investor of a direct or indirect controlling interest in a Peruvian public company would not trigger any requirement to obtain governmental authorizations.

2.4 General principles

The following principles apply in general to public takeovers launched in Peru. They are based on the Securities Market Law, the Corporations Law and the Tender Offer Regulations:

(a) Shareholders must have absolute and free control over the shares they own. Any rules established in a company's by-laws that limit the transfer of shares or give preferential acquisition rights to current shareholders, are considered void. The company cannot recognize shareholder agreements that violate these principles.

(b) Any decision taken in a general shareholders' meeting that damages the interests of the company as whole, directly or indirectly benefiting one or more shareholders, can be judicially challenged by any shareholder, regardless of its interest in the company.

(c) The board of directors must act with diligence, loyalty and in the best interest of the company as a whole, without favoring any particular shareholder. The board will be held liable for any decision adopted that violates applicable laws, the company's by-laws, abuses its powers, is made with negligence or willful misconduct, or conflicts with the interest of the company.

(d) Any act, omission, conduct or practice that violates market integrity and transparency is forbidden, such as (a) trading, or placing orders to trade, that give a false or misleading perception of the volume of, or demand for, one or more securities: (i) raising, reducing or maintaining the price of such securities to an abnormal or artificial level, or (ii) increasing or reducing the level of liquidity of such securities; (b) trading using fictitious devices or any other devices in order to deceive or mislead investors; (c) insider trading; (d) improper disclosure of inside information to another person; and (e) misuse of information that is not generally available but would affect an investor's decision.

(e) All shareholders of the target company must be properly informed of the terms, conditions, advantages and disadvantages of the bid. For such purpose, the board of directors must issue a report assessing the merits of the proposal, and all shareholders must be granted access to such report.

(f) An offeror must, before launching a bid, ensure that it will be able to fulfill its obligations by grating guarantees to secure the total amount of the consideration offered.

(g) Since the date of the original acquisition of substantial interest (in the case of a mandatory tender offer), and during the tender offer period in both, voluntary and mandatory tender offers, an offeror is not allowed to acquire common shares or any other securities that may grant voting rights in the open market, either through the Lima Stock Exchange or over-the-counter.

(h) Finally, Peruvian tender offer regulations aim to ensure equal treatment among all shareholders of the target company, regardless of the number of voting shares each shareholder may have, as well as ensure a minimum level of disclosure and protection and fair treatment of all shareholders.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that attach to different holding percentages in a listed corporation in Peru:

Shareholding	Rights
One share	• Right to participate in the distribution of dividends and shareholder equity resulting from the liquidation of the company. However, pursuant to Article 232 of the Peruvian Corporate Law, the right to collect past-due dividends (i) in the case of corporations (*sociedades anónimas*) other than publicly-held companies (*sociedades anónimas abiertas*), expires 3 years after the date on which the dividend payments was due, and (ii) in the case of companies that are publicly held companies (*sociedades anónimas abiertas*), expires 10 years after the date on which the dividend payment was due. • Right to attend and vote at a general shareholders' meeting or special shareholders' meeting, as applicable.

Shareholding	Rights
	• Right to supervise the way in which the management conducts its business, in the manner set forth in applicable laws and the company's by-laws. • Right to request all information related to a shareholders' meeting that has been called; provided, however, that the board is entitled to reject such request if it considers that such disclosure may jeopardize the company or its businesses. • Right to exercise preemptive or accretion rights in connection with newly issued shares as part of a capital increase on a pro rata basis, unless (i) in the case of corporations (*sociedades anónimas*), it is otherwise agreed to by holders of 100% of the voting shares, (ii) in the case of publicly-held companies (*sociedades anónimas abiertas*), it is otherwise agreed to by holders of 40% or more of the company's outstanding voting shares, provided that the capital increase does not favor, directly or indirectly, certain shareholders to the detriment of others, (iii) the capital increase results from a conversion of debt to common shares, and (iv) the capital increase results from a corporate reorganization. • Right to exercise redemption rights if the company (i) changes its corporate purpose, (ii) changes the place of organization to a foreign country, or (iii) other cases contemplated by the applicable laws and/or the company's by- laws. • Right to judicially challenge decisions of the general shareholders' meeting when it is contrary to the Corporations Law or any other applicable law, the company's by-laws, the interests of the company as a whole and in benefit of one or more shareholders, or when such decision can be annulled pursuant to the Corporations Law or the Peruvian Civil Code. • Right to propose to the general shareholder's meeting the removal of a member of the board in case such member has a conflict of interest with the company. • Right to request to a notary public or a judge to call the annual mandatory shareholders' meeting when such shareholders' meeting has not been summoned within the time and for the purposes set forth in the company's by-laws. • Right to file damage claims against any member of board unless the damage has been caused to the company as a whole.

Shareholding	Rights
	• Right to obtain a certified copy of minutes from a shareholders' meeting, even if the shareholder has not attended. • For corporations (*sociedades anónimas*) and for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the second call to install a general shareholders' meeting and discuss simple matters such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. • Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the third call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by- laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation.
5% or more (of existing share capital with right to vote)	• Only applicable for publicly-held companies (*sociedades anónimas abiertas*): right to request the board to convene the general shareholders' meeting and, if the board fails to do so within 15 days following such notification, request a public notary or a judge to call it. • Request information regarding the company's operations, to the extent the information requested is not deemed confidential information and/or its disclosure does not cause damage to the company.
20% or more (of existing share capital with right to vote)	Request the distribution of dividends in a percentage that does not exceed 50% of the annual net profits.
25% (of existing share capital with right to vote)	• Only for corporations (*sociedades anónimas*): request the board to convene the general shareholders' meeting and, if the board fails to do so within 15 days following such notification, request a notary public or a judge to call it. • Request all documents related a shareholders' meeting that has been called; the board cannot reject the request as long as such shares are represented at the meeting. • Request once to postpone a summoned shareholder's meeting for no less than three and no more than five days. • Request the attendance of a notary public in a shareholders' meeting.

Shareholding	Rights
25% (of existing share capital with right to vote)	Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the second call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by-laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation.
33.33%	Exercise corporate liability actions against board members, provided that: (i) the petition comprises indemnities in favor of the company as a whole, and (ii) the shareholders that promote the action have not approved anything in the contrary in the shareholders' meeting.
40% (of existing share capital with right to vote)	Only for publicly-held companies: approve that shareholders shall not exercise pre-emptive rights to subscribe to new common shares in a share capital increase, provided that the capital increase does not favor, directly or indirectly, certain shareholders to the detriment of others.
50% (of existing share capital with right to vote)	• For corporations (*sociedades anónimas*) and for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the first call to install a general shareholders' meeting and discuss simple matters such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower. • Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the first call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by- laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation.
50% + one share (represented at a general shareholders' meeting)	• Only for corporations (*sociedades anónimas*): take decisions on simple matters, such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower. • Only for publicly-held companies (*sociedades anónimas abiertas*): take decisions on both single and complex matters at a general shareholders' meeting.

Shareholding	Rights
50% + one share (of existing share capital with right to vote)	• Only for corporations (sociedades anónimas): take decisions on complex matters such as (i) a change in the by-laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation. For corporations (sociedades anónimas), the company's by-laws may establish higher quorum requirements and majorities, but not lower.
60% (of existing share capital with right to vote)	• Only for corporations (*sociedades anónimas*): quorum required in the second call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by-laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower.
66.66% (of existing share capital with right to vote)	• Only for corporations (*sociedades anónimas*): quorum required in the first call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by-laws; (ii) capital increase or reduction; (iii) the issuance of obligations; (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital; (v) a merger, division, reorganization or transformation; and (v) the company's dissolution and/or liquidation. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower.

3.2 Restriction and careful planning

Peruvian law contains a number of rules that apply even before a public takeover bid is publicly announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid or a target company, among others. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process intended at launching a public takeover bid.

3.3 Insider trading and market abuse

Any undisclosed public tender offer or the intention to launch a public takeover bid is deemed inside information by the Peruvian Securities Market Law and Market Abuse Regulations. Therefore, while the tender offer has not yet been announced to the market, all persons that have knowledge of it must refrain from misusing such information and keep that information strictly confidential. The Peruvian Securities Market Law and the Market Abuse Regulations consider that the information is misused when a person: (i) reveals the information to third parties, (ii) recommends operations to others based on such information, and (iii) uses the information to directly or indirectly benefit themself or third parties. In addition, such rules prohibit, among other things, manipulating the target's stock price, e.g., by creating misleading rumors of a potential takeover bid.

3.4 Due diligence

Peruvian Tender Offer Regulations do not contain specific rules regarding whether or not a prior due diligence may be conducted, nor how such due diligence shall be conducted. Nevertheless, a prior due diligence or pre-acquisition review is generally accepted in practice (and by the SMV), and appropriate mechanisms have been developed to conduct a due diligence or pre-acquisition review and to mitigate potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

3.5 Disclosure of shareholding

Although it is not standard practice for a Peruvian company to include a provision in its by-laws governing the ownership threshold above which share ownership must be disclosed. Under the current Economic Groups Regulations, listed companies must inform the SMV of the members of its economic group and a list of its holders of common shares that hold more than a 0.5% share interest, as well as any change to such information.

In addition, the Securities Market Law establishes that listed companies must inform the SMV and the Lima Stock Exchange of any transfer of its common shares made by any person or entity who directly or indirectly owns 10% or more of the company's total share capital or by any person or entity who directly or indirectly becomes owner of, or is no longer an owner of, 10% or more of the total share capital of a listed company.

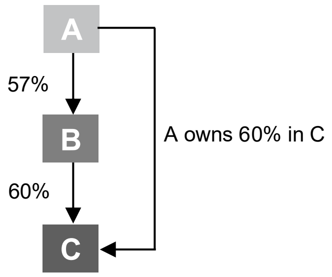
3.6 The concept of "substantial interest"

The obligation to launch a tender offer is triggered when a person or group of persons (acting in concert) intends to acquire or has acquired a "substantial interest" in a target company (see 4 below). According to Peruvian Tender Offer Regulations, a substantial interest is acquired by a person or group of persons (acting in concert) when the purchase (i) will result in such person or group of persons (acting in concert) beneficially owning (directly or indirectly) at least 25% of the outstanding shares with voting rights of a company in one or a series of transactions, or (ii) allows such person to (a) appoint a majority of the directors of the target company or (b) amend the by-laws of the target company. Ownership thresholds of 50% and 60% also trigger certain rights to appoint a board member or control the company in general. When a person reaches or surpasses each of the 25%, 50% and 60% thresholds the obligation to launch a tender offer is triggered. This means that it is possible to move in between thresholds without triggering the obligation to launch a tender offer. For instance, if a person already owns 26% and increases its ownership to 47%, that will not trigger an obligation to launch a tender offer.

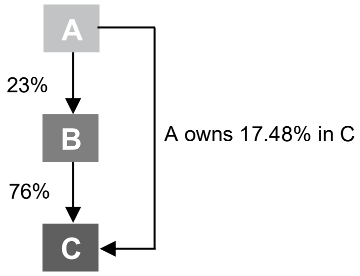
3.7 Calculation of indirect ownership

If an interest is acquired indirectly through an intermediate company, the following methods are used to determine whether the acquisition qualifies as an acquisition of substantial interest in the target company and, therefore, if such indirect acquisition triggers the obligation of the acquirer (or acquirers) to launch a subsequent mandatory tender offer or to otherwise sell the shares indirectly acquired in the target company.

In cases where a person (A) acquires more than 50%, e.g., 57%, of the voting shares of an intermediate company (B), such person is deemed to acquire the percentage owned by the intermediate company (B), e.g., 60% in another company. This triggers the tender offer regulations in respect of the third company (C).



In cases where a person (A) acquires less than 50%, e.g., 23%, of the intermediate company (B), the indirect participation is calculated by multiplying such percentage by the percentage owned by the intermediate company (B), i.e., 76% in another company (C). This could trigger the tender offer regulations in respect of company C. In this example, company A does not meet the 25% threshold of outstanding shares with voting rights and, therefore, no mandatory tender offer would be triggered by company A in respect of either company B or company C.



3.8 Acting in concert

Pursuant to the Tender Offer Regulations, a person or group of persons acting in concert that acquires or intends to acquire a "substantial interest" (see 3.6) will be jointly liable to carry out a mandatory takeover bid, even though each individual group member does not surpass the required threshold to establish a "substantial interest" or otherwise have the power to (i) appoint a majority of the members of the target company's board of directors, or (ii) amend the by-laws of a target company.

3.9 Irrevocability

Peruvian laws provide that once the tender offer has been announced, such offer cannot be withdrawn, even in the case of a voluntary takeover bid.

3.10 Guarantees

An offeror must, prior to launching a bid, ensure that it will be able to fulfill its obligations in the offer by grating guarantees to secure the total amount of the consideration offered. If the consideration offered is (i) in cash or in securities to be issued by the target company or the offeror, as applicable, the guarantee must be granted for the total amount of such consideration and it may be in cash, a letter of credit or any other type of guarantee; provided, however, that such guarantee is unconditional, irrevocable and enforceable upon demand, and (ii) to be paid with previously issued securities, the offeror shall evidence that it is the legal owner of all the securities offered in exchange, and such securities are blocked in the account of the respective broker-dealer under which securities are registered or otherwise evidence that such securities will be available to pay the consideration offered in full.

3.11 Exemptions

There a number of exceptions in which there is no obligation to launch a tender offer even though a substantial interest in a target company has been acquired. The main exemptions are the following:

(a) Prior written consent from all shareholders with a right to vote.

(b) When substantial interest is acquired as a consequence of a reorganization among companies of the same economic group, as long as such reorganization does not alter the ultimate control of the economic group.

(c) When substantial interest is acquired by a broker-dealer as a result of its fulfilment of an underwriting obligation.

(d) When shares are acquired by a depository for the purposes of subsequently issuing ADRs (American Depository Receipts), GDRs (Global Depository Receipts) or similar securities.

(e) When an ADR, GDR or similar security is acquired, unless the acquirer exercises the right to vote the underlying shares or requests delivery of such underlying shares.

(f) When substantial interest is acquired through an initial public offering.

(g) When substantial interest is acquired through a conversion of debt into capital stock under a bankruptcy procedure.

(h) When substantial interest is acquired through the exercise of pre-emptive rights.

(i) When substantial interest is acquired through the assignment of shares to a trust, as long as the trustee is a local financial entity or a foreign bank classified as a first in class by the Peruvian Central Bank and the trustor or originator maintains the right to vote of those shares.

4. Effecting a Takeover

4.1 Types of public takeover bid

Peruvian securities regulations include mandatory takeover rules applicable to the acquisition of a substantial interest in a company that has at least a class of shares with voting rights registered with the SMV (a "**Target Company**"). The Securities Market Law and the Tender Offer Regulations require any person, who directly or indirectly acquires in one or a series of transactions a substantial interest in a Target Company to launch a tender offer (*Oferta Pública de Adquisición*) (a "**Mandatory Tender Offer**"). In addition, a person who directly intends to acquire in a substantial interest in one or a series of transactions is also required to launch a Mandatory Tender Offer prior to acquiring the substantial interest, unless such person acquires the substantial interest (i) indirectly, (ii) in a public secondary offering of securities, (iii) in a single transaction, or (iv) in no more than a series of four consecutive transactions in a period of three consecutive years. Any tender offer launched prior to acquiring a substantial interest so long as you do not fall in the situations described in items (i), (iii) or (iv) is referred to herein as a "Voluntary Tender Offer".

Except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring substantial interest in a Target Company, the tender offer is required to be launched at the earlier to occur of (i) six months from the date on which the requirement to launch the tender offer is triggered, i.e., the date on which the substantial interest is acquired, and (ii) five trading days from the date the valuation entity files the valuation report referred to below (the "**Valuation Report**").

This mandatory procedure has the effect of alerting other shareholders of the Target Company and the market that a person or a group of persons acting in concert has acquired a significant percentage of the Target Company's voting shares, and gives them the opportunity to sell their voting shares at the price offered by the offeror. The offeror is required to launch a tender offer unless: (i) shareholders representing 100% of the voting rights give consent in writing to transfer all or part of the common shares to the offeror; (ii) voting shares are acquired by a depositary in order to subsequently issue ADRs, ADSs or similar securities; or (iii) voting shares are acquired by means of exercising pre-emptive rights.

4.2 Number of securities

Except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring substantial interest in a Target Company, Mandatory Tender Offers must be launched for at least the number of shares resulting from the following formula:

[x/y] x [1-z] = minimum number of shares to be tendered

Where:

x = Percentage of securities acquired in the Target Company over the last three years.

y = Percentage of securities owned by third parties before the transaction(s) which triggered the tender offer.

z = Percentage of securities owned after the transaction that triggered the tender offer.

4.3 Consideration offered

In a Mandatory Tender Offer, the price offered for the tender of securities must be the greater of (x) the actual price paid in the acquisition of the substantial interest and (y) the price determined in the Valuation Report by a valuation entity appointed by a special committee (the "**Appointing Committee**") comprised of three SMV officers and one representative appointed by the Target Company who has no voting rights in the Appointing Committee. There is no regulatory period for the appointment of the valuation entity by the Appointing Committee. However, in practice the Appointing Committee takes approximately one month to appoint the valuation entity. The valuation entity is required to value the target company for purposes of determining the minimum purchase price per share and file the Valuation Report with the SMV within 30 calendar days from its appointment; provided, however, that such period may be extended by the Appointing Committee at the request of the valuation entity.

In determining the minimum price of the shares, the valuation entity must use international valuation practices and the following criteria: (i) the book value of the Target Company, (ii) the liquidation value of the Target Company, (iii) the Target Company's valuation as an ongoing business, (iv) the average price of the Target Company's voting shares during the immediately prior six months, and (v) in case there has been a public tender offer over the Target Company's voting shares during the previous year, the price offered in that public tender offer. After applying all of the foregoing criteria except where any of such criteria cannot be applied – the valuation entity must provide the minimum purchase price for purposes of the Mandatory Tender Offer based on the criteria that, in its sole discretion, is most appropriate for such purposes.

In cases where the tender offer is a Voluntary Tender Offer, there are no minimum prices that must be complied with and there no is no legal requirement to appoint a valuation entity for purposes of valuing the shares.

4.4 Tender offer period

If the tender offer is a Voluntary Tender Offer, the period during which the tender offer is open can be determined by the offeror, provided such period is not less than 20 trading days. This period can be extended once by the offeror with no less than four business days' prior notice for a period that shall not exceed 20 additional trading days.

If the tender offer is a Mandatory Tender Offer, the tender offer period must be of at least 20 trading days and not more than 40 trading days.

Once launched, both the Voluntary Tender Offer and the Mandatory Tender Offer cannot be withdrawn by the offeror.

4.5 Procedure

Regardless of whether there is a Mandatory Tender Offer or a Voluntary Tender Offer, the offeror must notify the Target Company, the SMV and the Lima Stock Exchange of the proposed tender offer. The tender offer period begins the day after all such entities have been notified of the tender offer.

Such notification must include (i) a prospectus, (ii) evidence of the guarantees granted by the offeror, (iii) any governmental or administrative prior authorization, if applicable (e.g., in the case of financial institutions), (iv) a draft of the tender offer notice to be published in the Lima Stock Exchange Bulletin (during the tender offer period) and in a local newspaper, and (v) powers of attorney granted by the offeror to its representatives, if applicable.

Once the foregoing documents have been filed with the SMV, the SMV may comment on the information submitted within five business days from the filing date. The offeror has three business days to address the comments.

4.6 Board of directors' report

During the first seven days following commencement of the tender offer, or when a competitive bid has been launched, the board of directors of the Target Company is required to issue a report describing the advantages and disadvantages of tendering shares and disclosing any information regarding any agreements between the offeror and the Target Company, its board members or its shareholders.

4.7 Competitive bid

Competing bids may only be launched during the first 10 days after the tender offer period has commenced. Pursuant to Peruvian law, competitive bids are not required to improve the terms and conditions of the first tender offer.

Shareholders may accept the tender offer or any of the co-existing competing bids.

4.8 Acceptances

Acceptances of the tender offer must be processed by an authorized broker-dealer and may be withdrawn at any moment during the tender offer period.

4.9 Allocation

Once the tender offer period expires, an officer of the Lima Stock Exchange (*Director de Rueda*) will allocate the tendered securities the following day. The Lima Stock Exchange will notify the results of the tender offer to the SMV and will publish them on the Lima Stock Exchange Bulletin.

4.10 Settlement

The settlement of the tender offer will be done following the rules that are applicable to transactions made through the Lima Stock Exchange trading system, i.e., settlement shall be done in T+2.

4.11 International standards

If a tender offer takes place in Peru and in another jurisdiction simultaneously, the period and certain other conditions can be adjusted to comply with international standards, provided that prior approval of the SMV is obtained.

4.12 Non-conforming acquisition

To the extent that a substantial interest is acquired in a Target Company in violation of the applicable tender regulations, the acquirer of such shares may be subject to the following:

- Administrative sanctions may be imposed (fines between 1 and 700 tax units).
- The SMV may suspend the voting rights of all the securities acquired by the offeror during the three years prior to such acquisition and also those securities owned by the offeror prior to the acquisition that violated the tender rules.
- The SMV will require the acquirer to sell the securities in the market through a public offering.
- In the case of indirect acquisition of substantial interest in the Target Company, the offeror may either launch a subsequent Mandatory Tender Offer or launch an unconditional public offer to sell the securities that were indirectly acquired either through an auction process or in the open market. If the offeror decides to launch a public offer to sell through an auction process, the initial maximum price to be offered for such securities shall be the lower between (i) the actual price paid in the indirect acquisition of the substantial interest and (ii) the price determined in the Valuation Report, as described above under "Consideration Offered".

To the extent that the SMV determines that it would be more beneficial to the market, at the request of the acquirer of the shares, the SMV may, at its own discretion, allow the offeror to launch a tender offer for the remaining shares of the Target Company.

5. Timeline

As a general rule, the takeover bid process for a Mandatory Tender Offer is similar to the process that applies in case of a Voluntary Tender Offer, with certain exceptions.

The table below contains a summary overview of the main steps of a typical Voluntary Tender Offer under Peruvian law:

Step
1. Preparatory stage: • Preparation of the bid (analysis, due diligence, commit financing, drafting of prospectus). • The offeror approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.

Step	
2.	Launching of the bid: • The offeror files the tender offer notice with the SMV, the Lima Stock Exchange and the target company. • The offer is binding and irrevocable the first business day after the tender notice has been filed. On the same date, the tender offer notice is published in the Stock Exchange Bulletin and remains published during the tender offer period. • The tender offer notice must also be published in the Official Peruvian Gazette "El Peruano" and another newspaper within two business days following the date in which the tender offer period commences. • The bid must be in force for at least 20 trading days.
3.	During the Tender Offer period: • The offeror, SMV and Lima Stock Exchange must grant recipients of the bid access to all the filed documents. • Within seven days following commencement of the tender offer period, the board of directors must issue a report describing the advantages and disadvantages of tendering the shares. • The SMV has five business days from the beginning of the tender offer period to comment on the filed documents. • The offeror has three business days following receipt of the SMV's comments to address them. Failing to satisfactorily address the comments gives the SMV the right to declare the tender offer invalid. • The offeror might improve its offer and competing offers may only be filed within 10 trading days from the commencement of the tender offer period.
4.	Settlement: • Settlement shall occur within two business days following expiration of the tender offer period.

Set out overleaf is an overview of the main steps for a voluntary public takeover bid in Peru.

Voluntary public takeover bid (indicative timeline)

Start process	
A Day	Launch of bid: Offeror files tender offer notice with the Peruvian Capital Markets Superintendency (SMV), the Lima Stock Exchange and the target company Tender offer notice is published in the Stock Exchange Bulletin
Day 0	Offer is binding and irrevocable (first business day after tender notice is filed) Tender offer notice is published in the Stock Exchange Bulletin
Day 2	Offer is published in Official Peruvian Gazette "El Peruano" and another newspaper
Day 4	SMV comments on the tender offer documents. Offeror has 3 business days to address SMV comments (otherwise SMV may declare tender offer invalid).
Day 7	Board of directors of target company must issue report on the advantages and disadvantages of tendering the shares
Day 10	Competing offers may be filed (within 10 business days from beginning of tender offer period) Offeror may improve its offer whether or not a competing offer has been filed.
Day 20	Expiry of tender offer period.
Day 22	Settlement occurs

Bid must be in force for at least 20 business days. During offer period, SMV and Lima Stock Exchange must grant recipients of the bid access to all filed documents

6. Takeover Tactics

The most common takeover tactics include the following:

6.1 Calculation of substantial interest in the Target Company

Although, under a hostile takeover bid, it will be difficult for the offeror to obtain information concerning the holdings of each shareholder of the Target Company and their identities from the Target Company or the Peruvian depository entity (CAVALI ICLV S.A.), it is crucial for the offeror to carry out an investigation using publicly available information from the SMV and the Lima Stock Exchange, to determine the number of shares with voting rights outstanding as well as the number of other securities outstanding, i.e., (i) convertible bonds or any other securities that entitle their owners to acquire or subscribe common shares, to the extent that such securities grant their owners to exercise such rights within 18 months following their acquisition, and (ii) ADRs, GDRs or similar securities.

6.2 Obligation to acquire additional shares in a subsequent Mandatory Tender Offer

As mentioned in 4.2 above, except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring a substantial interest in the Target Company, if an offeror acquires a substantial interest without having launched a tender offer, such acquisition will trigger the obligation to launch a tender offer for the number of additional common shares as a result of the formula described in 4.2 above. Therefore, the offeror must be aware of this obligation and make sure it has secured the funds or securities needed to pay the required consideration before acquiring a substantial interest in the Target Company.

6.3 Deciding whether to launch a prior Mandatory Tender Offer or a subsequent Mandatory Tender Offer

Before deciding to launch a tender offer, an offeror should consider and evaluate the advantages and disadvantages of launching a prior Mandatory Tender Offer or a subsequent Mandatory Tender Offer after having acquired a substantial interest in the Target Company. The following table summarizes the main advantages and disadvantages of implementing each strategy:

	Prior Mandatory Tender Offer	Subsequent Mandatory Tender Offer
Consideration offered	Determined by the offeror at its sole discretion.	Minimum consideration determined by a valuation entity (see 4.3 above). Offeror has no control over the consideration to be offered.
Valuation Report	No.	Yes.
Competing bids	Possible.	Unlikely, as there is already a bidder which has acquired substantial interest in the Target Company.

	Prior Mandatory Tender Offer	Subsequent Mandatory Tender Offer
Power to determine the number of common shares to be acquired	Yes.	No. A Mandatory Offer subsequent to the acquisition of substantial interest shall be launched to acquire an additional number of common shares.
Prior disclosure regarding intention to acquire substantial interest	Yes.	No.

6.4 Stake building

Potential bidder must take the following into consideration:

(a) If the potential bidder intends to acquire a substantial interest in the Target Company before launching a Mandatory Tender Offer, such acquisition must be made in no more than a series of four consecutive transactions in a period of 3 years. Otherwise, the SMV may consider that such acquisition has been made in violation of Peruvian tender offer rules, since the bidder should have launched a prior Mandatory Tender Offer.

(b) The offeror is not allowed to acquire or commit to acquire common shares in the open market (either through the Lima Stock Exchange or over the counter) during the tender offer period. This limitation does not extend to the offeror's affiliates.

6.5 Irrevocability of the bid

Once the tender offer has been launched, the offeror will not be able to revoke the offer.

6.6 Insider trading and market manipulation

Pursuant to the Securities Market Law and the Market Abuse Regulations, any person who has access to inside information in connection with (i) a potential takeover bid or (ii) any undisclosed information of the Target Company or its securities or businesses shall keep such information confidential and cannot (a) reveal that information to third parties, (b) recommend operations to others based on such information, (c) use that information to directly or indirectly benefit himself/herself or third parties, and (d) implement any price manipulation practices in order to create artificial, false or misleading appearances with respect to the price of the Target Company's common shares.

6.7 Anti-takeover defense mechanisms

According to the Corporations Law, the fundamental obligations of the members of the board are (i) to act in good faith, in the best interest of the company, and for the benefit of all its shareholders, (ii) not to adopt any decision that benefits themselves or any related party, and (iii) to avoid conflicts or potential conflicts of interest between themselves as members of the board and those of the company as a whole.

In addition, pursuant to the Tender Offer Regulations, once directors and the management have knowledge of a potential takeover offer (or that the company is under the threat of a takeover) and until the announcement of the results of the takeover, they must be impartial towards potential competitive offers, giving priority at all times to the interests of the shareholders and refrain from performing, conducting or concerting any act that is not in the ordinary course of the company's business. They must not disrupt or frustrate the normal course of an offer or favor an offeror. Therefore, directors and the company's management cannot agree to issue new shares or other securities, execute option agreements or sell any of the company's assets, among other things.

There is no express prohibition, however, regarding the execution of agreements prior to having knowledge of a takeover offer with the purpose of preventing or deterring unwanted takeovers, which are subject to a condition precedent consisting of having been notified with a takeover offer. Nonetheless, depending on which anti-takeover mechanism is agreed or implemented, such act may be challenged for violating fundamental principles, i.e., if they damage the company as a whole, or such measure is considered in benefit of a particular shareholder or group of shareholders such as those who have control over the Target Company, except where such decisions have been agreed, consented to or accepted by all of the company's shareholders with voting rights. This requirement may imply, in practice, that no defensive strategies may be adopted, given the fact that if the potential offeror (or any of its affiliates or subsidiaries) previously acquired one common share of the future Target Company and votes against the decision in the actual shareholders' meeting, it will not be possible to adopt the decision with 100% votes of the voting shares.

Anti-takeover mechanisms are unusual in Peru and there is no case law that addresses the legality or validity of them. However, in the following chart we address the viability of some anti-takeover mechanisms commonly used in other jurisdictions and their consequences if implemented in a Peruvian listed company:

Mechanism	Assessment and considerations
1. **Share buyback** Share buyback "with a view to avoid imminent and serious harm" to the company.	• Once the management has been notified of the bid, it is prohibited from performing any act that may frustrate the bid. • A buyback without cancelling shares is only possible if it is done to prevent serious harm to the company, or if there is an agreement at the general shareholders' meeting. The company can only keep them for two years without cancelling them, and the acquisition cannot exceed 10% of the total share capital.
2. **Crown jewels** An arrangement concerning key assets of the company which, in the event of a takeover bid, may lead to the assets being sold.	• The board would not be able to perform these actions because they could be held liable for damages to the company. • If a shareholders' meeting agrees on this mechanism, it could be challenged for violating the interests of the company, unless adopted by all holders of common shares.
3. **Limitation of voting rights** Clause in the by-laws providing for a proportional restriction of voting rights (applying to all shareholders equally).	• It is not possible. According to the Corporations Law, every share has one vote.

Mechanism	Assessment and considerations
4. Limitation on share transfers	• Listed companies cannot establish limitations to transfer shares according to the Securities Market Law.
5. Golden Parachutes	• Such agreements may be questionable as it may be deemed that they go against the interests of the company in benefit of certain shareholders and/or the administration.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Under Peruvian legislation, it is not possible to compel the remaining shareholders to sell their common shares to the offeror after a successful takeover bid. The only possible option is to negotiate with the remaining shareholders.

8. Delisting

There are no legal limitations to prevent a public company from delisting and going private. However, the delisting of a certain class or all common shares gives the holders that were absent or voted against that decision in the shareholders' meeting a redemption right. Accordingly, if there is a decision to delist, the company and/or the shareholders that voted in favor of the delisting must launch an offer directed at such shareholders offering to acquire all their holdings (*Oferta Pública de Compra por Exclusión*). Any decision that has an economic effect equivalent to the delisting of the securities triggers the obligation to launch the foregoing offer.

9. Contacts within Baker McKenzie

Liliana Espinosa, Pablo Berckholtz and Alonso Miranda in the Lima office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Peru.

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Philippines

1. Overview

Public M&A activity has been consistently robust in the Philippines. Popular or traditional sectors such as power and utilities continue to dominate the market, with increased M&A activity in the healthcare, financial industries, retail, infrastructure, and real property sectors.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Philippine law relating to public takeover bids can be found in:

- Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines ("**Revised Corporation Code**"), which took effect on 23 February 2019; and
- Republic Act No. 8799, otherwise known as the "Securities Regulation Code" ("**SRC**") and the 2015 Implementing Rules and Regulations of the SRC ("**SRC IRR**").

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Philippines, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to compliance with foreign ownership ceilings. These rules determine the maximum allowable percentages of foreign ownership in companies subject to public takeovers, and are set out in Republic Act No. 7042 (Foreign Investments Act of 1991), and the Twelfth Regular Foreign Investments Negative List which specifies the types of industries subject to foreign ownership ceilings. Furthermore, the guidance on the computation of foreign ownership ceilings is provided in the Guidelines on Compliance with Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities issued by the Philippine Securities and Exchange Commission ("**SEC**").

(b) The rules relating to insider dealing and market manipulation (insider trading rules). These rules are contained in the SRC and SRC IRR.

(c) The rules relating to minimum public ownership ("**MPO Rule**"). These rules are relevant to the extent that the company subject to the takeover is a listed company on the Philippine Stock Exchange ("**PSE**").

(d) The rules and regulations regarding merger control. These rules and regulations are provided in the Philippine Competition Act ("**PCA**") and the Rules and Regulations to Implement the Provisions of the PCA ("**PCA IRR**").

(e) The rules on disclosure issued by the PSE. Specifically, the PSE categorizes disclosure reports as either (i) structured reports, or those reports which public listed companies are required to submit on a regular basis, or (ii) unstructured reports, or those reports that need to be disclosed in relation to any material fact or event that may affect an investor's decision in relation to the public issuer's securities.

(f) The rules relating to additional securities. The PSE requires publicly-listed companies to submit applications for listing of new shares that will be issued to the public, subject to the requirements set forth under the PSE's Consolidated Listing and Disclosure Rules ("**PSE Rules**").

(g) The rules on backdoor listing. Under the PSE Rules, a backdoor listing is deemed to occur when a listed company acquires or merges or combines with an unlisted company, or when a listed company is acquired by, merged or combined with an unlisted company, and which acquisition, merger, or combination results in a substantial change in the business, membership of the board of directors, or voting structure of the listed company. In this regard, the PSE allows the listing of shares of a listed company subject to compliance with the requirements for a backdoor listing. In particular, the Revised Rules on Backdoor Listing require a backdoor listed company to conduct a public offering of at least 10% of its issued and outstanding shares within one year from closing or completion of the transaction giving rise to backdoor listing.

(h) The rules on corporate governance. The Revised Corporation Code, as well as several recent guidelines of the SEC (i.e., the Revised Code of Corporate Governance for Public Companies and Registered Issuers of the SEC took effect on 12 January 2020 and revised implementing rules and regulations of Republic Act No. 9856 or the Real Estate Investment Trust (REIT) Act of 2009) requires the appointment of independent directors and certain officers (such as REIT property managers) to maintain stability and enforce supervision and oversight over listed companies.

2.3 Supervision and enforcement by the SEC

Public takeover bids are subject to the supervision and control by the SEC, and the Philippine Competition Commission ("**PCC**"), to the extent that the takeover breaches the thresholds requiring merger clearance. The SEC is the principal securities regulator in the Philippines.

The SEC has a number of legal tools that it can use to supervise and enforce the compliance with the public takeover bid rules, including administrative fines. In particular, the Market and Securities Regulation Department ("**MSRD**") of the SEC is the department charged with regulation of registration of securities prior to their sale to the public, as well as compliance with disclosure obligations of listed companies. In addition, criminal penalties could be imposed by the courts in cases of non-compliance.

2.4 General principles

The following general principles apply to public takeovers in the Philippines. These rules are based on the Revised Corporation Code, SRC and the SRC IRR:

(a) All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto, provided that such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt;

(b) All stockholders shall have an appraisal right to dissent and demand payment of the fair value of their shares in cases of public takeovers involving mergers or consolidation of companies;

(c) All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

(d) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(e) The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(f) False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(g) During a tender offer (or before its commencement, if the target public company's board of directors has reason to believe that an offer might be imminent), the target public company may not: (i) issue any authorized but unissued shares; (ii) issue or grant options in respect of any unissued shares; (iii) create or issue or permit the creation or issuance of, any securities carrying rights of conversion into, or subscription to shares; (iv) sell, dispose of or acquire, or agree to acquire, any asset whose value amounts to 5% or more of the total value of the assets prior to acquisition; or (v) enter into contracts that are not in the ordinary course of business, except in each case, if the transaction is (1) pursuant to a contract previously entered, (2) entered with the approval of the target public company's shareholders in a general meeting, or (3) with the prior approval of the SEC; and

(h) Any person who shall become aware of a potential tender offer before the tender offer has been publicly announced may not buy or sell, directly or indirectly, the securities of the target public company (including any securities convertible or exchangeable into such securities, or any options or rights in any of the foregoing) until the tender offer shall have been publicly announced.

2.5 Foreign investment restrictions

Foreign investments are not restricted in the Philippines. Unless in the context of specific industries and sectors (such as the banking industry, the telecommunications sector or other public utilities), takeovers are not subject to prior governmental or regulatory approvals other than customary anti-trust approvals.

2.6 Proposed reforms

There are no proposed or upcoming reforms on takeovers in the Philippines. Note, however, that there is a proposal to raise the threshold for a mandatory tender offer, which is currently set at 35% of equity shares in a public company, but the same has not been implemented to date.

There are also pending reforms to:

- Propose amendments to the involuntary delisting rules of the PSE to require a listed company that is subject to involuntary delisting to conduct a tender offer to all its stockholders of record, at a minimum tender offer price which shall be the higher of (i) the highest value based on the fairness opinion or valuation report prepared by an independent valuation provider in accordance with SRC or (ii) the volume weighted average price of the listed security for one year immediately preceding the issuance of the delisting order. Previously, listed companies that are subject to an involuntary delisting proceeding are not required to conduct a tender offer. The PSE is also proposing to amend the voluntary delisting rules to require stockholders owning or representing at least 66% (2/3) of the total issued and outstanding capital stock to approve the voluntary delisting. The amended rules define total issued and outstanding shares as all shares of the same class as the existing listed shares issued under binding subscription contracts to subscribers or stockholders, whether fully or partially paid, except treasury shares. The current voluntary delisting rules require approval by the majority of the Board of Directors and 2/3 of the total outstanding and listed shares of the company to commence voluntary delisting proceedings.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Philippine-listed corporation:

Shareholding	Rights
One share	• The right to subscribe to all issues or dispositions of shares of any class, in proportion to respective shareholdings (pre-emptive right). • The right to transfer or dispose of shareholdings. • The right to receive dividends. • The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to inspect corporate records and financial statements. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to elect directors in proportion to shareholdings. • The right to dissent and demand payment for fair value of shares in cases of (i) amendment of articles of incorporation which has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing

Shareholding	Rights
	preferences in any respect to those of outstanding shares of any class, or extending or shortening the term of corporate existence, or (ii) lease, exchange, transfer, mortgage, pledge, or other disposition of all or substantially all of the corporate property and assets as provided in the Corporation Code; and (iii) merger and consolidation (appraisal right).
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting: • to amend articles of incorporation • to elect directors in proportion to shareholdings • to invest in another business or corporation • to increase or decrease capital stock • to incur or increase bonded indebtedness • to sell, dispose or encumber all or substantially all of the assets of a corporation • to declare stock dividends • to enter into management contracts • to adopt, amend, or repeal by-laws; • to fix consideration of no par value shares • to approve any merger or consolidation

3.2 Restrictions and careful planning

Philippine law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and disclosures in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a candidate bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a candidate bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse see 6.3 below. The rules include amongst other things that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid. Note, further, that public companies are required to submit their public ownership reports on a quarterly basis, which provide details of the shareholdings in the company, and public ownership of the company for the covered period.

The SRC provides for thresholds necessitating a mandatory tender offer of securities intended to be acquired. Specifically, Rule 19 (SRC Rule 19, and with its subsections, hereafter collectively the "**Tender Offer Rules**") of the SRC IRR governs the procedures and other regulations applicable to the conduct of tender offers in the Philippines.

Under the Tender Offer Rules, any person or group of persons acting in concert, who intends to acquire:

(a) at least 15% of equity securities in a public company in one or more transactions within a period of 12 months shall be required to file a declaration to that effect with the SEC;

(b) at least 35% of the outstanding voting shares, or such outstanding voting shares that are sufficient to gain control of the board of directors of a public company, in one or more transactions within a period of 12 months shall be required to disclose such intention and contemporaneously make a tender offer for the percentage sought to all holders of such securities within the said period;

(c) at least 35% of the outstanding voting shares, or such outstanding voting shares that are sufficient to gain control of the board of directors of a public company, directly from one or more stockholders shall be required to make a tender offer for all outstanding voting shares. Note that the sale of shares pursuant to a private transaction or a block sale shall not be completed prior to the closing and completion of the required tender offer; or

(d) such amount of the outstanding equity securities of a public company that will result in the acquiring party owning more than 50% of the total outstanding equity securities thereof shall be required to make a tender offer for all outstanding equity securities to all remaining stockholders of the public company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. Note that the acquirer of securities in the public company making the tender offer is required to accept all securities tendered.

If a person or group of persons, acting in concert, intends to acquire 35% of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company through the PSE trading system shall not be required to make a tender offer (even if such person or group of persons acting in concert acquire the remainder through a block sale), if after the acquisition through the PSE trading system, they fail to acquire their target or 35% of such outstanding voting shares that is sufficient to gain control of the board.

If equity securities of a public company are purchased at threshold amounts provided for under the Tender Offer Rules without complying therewith, the SEC may, upon complaint, nullify such purchase and order the conduct of a tender offer, without prejudice to any other applicable sanctions under the SRC.

Furthermore, disclosure requirements applicable to acquisition / disposal of shares of stock of a public company are governed by Rule 18 and Rule 23 of the SRC IRR, as follows:

(a) Reports filed by 5% beneficial owners under Rule 18 of the SRC

Any person who directly or indirectly acquires the beneficial ownership of 5% or more of any class of equity securities of a public company is required to disclose such fact to the public company, the PSE and the SEC. Such disclosure is made by way of SEC Form 18-A, and is made within five days after the date of acquisition of beneficial ownership by such person.

Generally, a person is a beneficial owner of or has beneficial ownership over an equity security, e.g., shares of stock, if such person, directly or indirectly, in respect of such security, has:

(i) through any contract, arrangement, understanding, relationship or otherwise, the power to vote, or to direct the voting of, such security; and/or

(ii) investment returns or power, which includes the power to dispose, or to direct the disposition, of such security.

In addition, the SRC IRR provides that a person shall be deemed to have an indirect beneficial ownership interest in any security which is held by a corporation of which such person is a controlling shareholder or if such security is subject to any contract, arrangement or understanding which gives a person voting power or investment power with respect to such security. Control, for this purpose, is the power to govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Likewise, a person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership, within 30 days, including but not limited to, any right to acquire, through the exercise of any option, warrant or right, through the conversion of any security, pursuant to the power to revoke a trust, discretionary account or similar arrangement, or pursuant to automatic termination of a trust, discretionary account or similar arrangement.

(b) Reports filed by 10% beneficial owners and the directors and officers of an issuer

A (a) director, (b) officer, or (c) any person who directly or indirectly is the beneficial owner of 10% or more of any class of any security of a public company is required to disclose and file a statement with the PSE and the SEC. The disclosure is made by way of SEC Form 23-A and is made within 10 calendar days after becoming a director, officer or a beneficial owner of the public company.

If there has been any change in such ownership (including if such ownership falls below 10%) or if such person ceases to be an officer or director of the public company), a director, officer or beneficial owner shall disclose and file a statement with the PSE and the SEC within 10 days after the close of the month in which such change occurred. The disclosure is made by way of SEC From 23-B, indicating: (a) the amount of securities beneficially owned at the close of the calendar month; and/or (b) if the person ceases to be an officer or director of the public company.

(c) Additional disclosures by beneficial owners, directors and officers of an issuer

Persons required to disclose their beneficial ownership in securities of an issuer are likewise required to disclose the information set out below (i) if the report is being filed due to the acquisition of 5% or more beneficial ownership of securities of a public company, and the reporting person previously owned 5% or more but not less than 10% of the outstanding securities of such public company, and (ii) if the report being filed is due to a change in the beneficial ownership of securities held by a 10% or more beneficial owner, only if such change in beneficial ownership is (1) equivalent to 50% of the previous shareholding of the reporting person, or (2) equivalent to 5% of the outstanding capital stock of the public company:

(i) background information on the 5% or 10% beneficial owner;

(ii) purpose or purposes of the acquisition of securities of the public company;

(iii) information on the beneficial owner's interest in the securities of the public company, including, among others: (i) if the beneficial owner, together with other persons, comprise a "group", information on the beneficial ownership of securities of such group members, (ii) voting or selling arrangements between the beneficial owner and its co-members, if comprising a group, and (iii) transactions relating to the class of securities reported on that were effected during the past 60 days by the beneficial owner and its co-members, if comprising a group; and

(iv) information on (and copies of) contracts, arrangements, understandings or relationships with respect to securities of the public company between (i) the beneficial owner and its co-members, if comprising a group, or (ii) the beneficial owner and any person, involving transfer or voting of any of the securities of the public company, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

We should note that the SEC, in its capacity as the primary government agency responsible for regulating transactions in Philippine securities and the implementation of the SRC and the SRC-IRR, may require from the reporting persons information other than the foregoing that the SEC may deem relevant to the acquisition so reported. The SEC may likewise require, in the public interest, the disclosure of the foregoing additional information (and submission of all contracts, agreements, instruments or other documents relating thereto) notwithstanding the fact that the conditions for disclosure thereof (as indicated in the appropriate SEC Forms) do not necessarily apply.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see also 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. This could for instance be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk that the public is misled, and that the company can keep the relevant information confidential.

3.6 Announcements of a public takeover bid

Prior to the public announcement of the takeover bid by the offeror and the target company (see section 6.2), no one is permitted to announce the launching of a public takeover bid. Announcement of a takeover prior to the actual offer launch or announcement of intent to make an offer constitutes material non-public information, which is prohibited under the SRC IRR.

A bidder that intends to announce a public takeover bid is mandated to make an announcement of its intention (to make a tender offer) in a national newspaper of general circulation within five business days from either (i) the approval by the board of directors of the selling shareholder(s) relative to the purchase of shares that may result in a mandatory tender offer or (ii) 30 business days prior to the commencement of the tender offer.

The offeror shall likewise publish the terms and conditions of the tender offer in two national newspapers of general circulation in the Philippines on the date of the commencement of the tender offer and for two consecutive days after compliance with the dissemination requirements under the Tender Offer Rules, including the distribution of notices to the holders of the class of securities sought to be acquired.

Copies of the foregoing notices of intent to make an offer are required to be submitted to the SEC after its publication.

In addition to the foregoing, the revised rules on backdoor listing of the PSE requires the applicant company to comply with the following:

(a) **Comprehensive Corporate Disclosure** - an applicant company is obligated to submit a Comprehensive Corporate disclosure within five trading days from receipt of a request from the PSE. The disclosure must include information such as the purpose of the transaction, the complete details of the transaction, and information on the new shareholders, among others.

(b) **Trading suspension** - a trading suspension shall be imposed immediately after evaluation of the disclosure submitted and determination on applicable of the rule on backdoor listing. The suspension shall be lifted one trading day after dissemination by the PSE of the Comprehensive Corporate Disclosure.

(c) **Stockholders' approval** - the issuer must likewise submit a sworn Corporate Secretary's Certificate confirming that its stockholders' approved the transactions resulting in backdoor listing.

(d) **Payment of listing and processing fees** - the issuer must likewise pay a listing fee equivalent to a tenth of 1% of the market capitalization of the new shares issued covered by the transaction, as well as a processing fee of PHP 250,000.

(e) **Minimum public ownership**. Upon and after the backdoor listing, the listed company shall have a minimum public ownership of twenty percent (20%). Compliance with this requirement shall be reckoned from closing or completion of the transaction giving rise to the backdoor listing.

(f) **Mandatory follow-on offering**. A backdoor listed company shall conduct a public offering of at least ten percent (10%) of its issued and outstanding shares within one year from closing or completion of the transaction giving rise to the backdoor listing. A stock rights offering ("**SRO**") shall not be deemed a public offering for this purpose.

(g) **Lock-up requirement**. Shares of the backdoor listed company that are acquired pursuant to the transaction giving rise to the backdoor listing shall not be sold or offered for sale, assigned or in any manner disposed of from closing or completion of the transaction giving rise to the backdoor listing and until six months after the conduct of the Mandatory Follow-On Offering. Further, shares of the backdoor listed company that are held by stockholders owning at least ten percent (10%) of the total issued and outstanding shares shall not be sold or offered for sale, assigned or in any manner disposed of for a period of one year from closing or completion of the transaction giving rise to backdoor listing.

3.7 Early disclosures – Put-up or shut-up

(a) **Early disclosure demanded by the SEC** – Under the SRC, any person making a tender offer shall make an announcement of its intent in a newspaper of general circulation within five business days from either the company's board approval authorizing negotiations relative to the purchase of shares that may result in a mandatory tender offer, or 30 days prior to the commencement of the offer. The announcement of intent (pre-launch notice) is required to be disclosed to the SEC on the date of its publication. The pre-launch notice is appended to, and shall form part of, the Initial Tender Offer Report (SEC Form 19-1).

(b) **Put-up or shut-up** – The SEC mandates the submission of an intention to launch a tender offer on the date of the announcement of the intention to purchase shares that will result in a tender offer.

3.8 Due diligence

The Philippine public takeover bid rules do not contain specific rules regarding the question of whether a prior due diligence can be organized, nor how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted (also by the SEC), and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns (such as the use of strict confidentiality procedures and data rooms).

3.9 Acting in concert

For the purpose of the Philippine takeover bid rules, the definition of "persons acting in concert" under the Tender Offer Rules is not defined. While the phrase "persons acting in concert" is not expressly defined under the SRC IRR or the Tender Offer Rules, we believe that this may be taken to mean, in its ordinary usage, persons or entities acting together, with common intent, interest and/or objective in respect of the activity sought to be regulated – in this context, the acquisition of outstanding securities or voting shares of the target public company.

4. Effecting a Takeover

There are two main forms of takeover bids in the Philippines:

- a voluntary takeover bid, in which a bidder voluntarily makes an offer for securities which do not meet the thresholds under the SRC IRR (see 4.1 below); and
- a mandatory takeover bid (see 4.2 below).

A bidder that intends to launch a takeover bid must include in its notification to the SEC and PSE an Initial Tender Offer Report, as well as proof of certain funds or a cash confirmation letter.

4.1 Voluntary public takeover bid

The bidder is free to make the takeover bid subject to merger control clearance if the merger breaches the thresholds under the PCA. Specifically, under the PCA, parties to an acquisition involving any trade, industry or commerce within the Philippines, or even without, to the extent such transaction has a direct, substantial and reasonably foreseeable effect in the trade, industry or commerce within the Philippines) are required to notify the Philippine Competition Commission of such transaction within 30 days from the execution of definitive agreements relating thereto where: (a) the aggregate annual gross revenues in, into or from the Philippines, or the value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds PHP 7.8 billion (Size of Party); and the value of the transaction exceeds PHP 3.2 billion (Size of Transaction). Furthermore, SEC approval is required in cases of merger or consolidation.

The bidder is in principle free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):

- The offered price may be paid in cash, securities or a combination of both.

- There is no minimum price for a voluntary takeover bid, but price is generally based on a valuation report issued by an independent appraiser for the shares to be acquired.

4.2 Mandatory public takeover bid

A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) as a result of an acquisition of voting securities, holds (a) at least 15% of equity securities in a public company in one or more transactions within a period of 12 months; or (b) at least 35% of the outstanding voting shares, or such outstanding voting shares that are sufficient to gain control of the board of directors of a public company, in one or more transactions within a period of 12 months; or (c) at least 35% of the outstanding voting shares, or such outstanding voting shares that are sufficient to gain control of the board of directors of a public company, directly from one or more stockholders; or (d) such amount of the outstanding equity securities of a public company that will result in the acquiring party owning more than 50% of the total outstanding equity securities thereof.

Under the SRC IRR, unless the acquisition of equity securities is intended to circumvent or defeat the objectives of the Tender Offer Rules, the mandatory tender offer requirement shall not apply to the situations where:

- any purchase of securities from the unissued capital stock; Provided, the acquisition will not result to a fifty percent (50%) or more ownership of securities by the purchaser or such percentage that is sufficient to gain control of the board;
- any purchase of securities from an increase in authorized capital stock;
- purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;
- purchases in connection with a privatization undertaken by the government of the Philippines;
- purchases in connection with corporate rehabilitation under court supervision;
- purchases in the open market at the prevailing market price; and
- merger or consolidation.

In terms of the price offered and the form of the consideration, the Tender Offer Rules require that the price must be supported by a fairness opinion provided by an independent financial advisor or equivalent third party.

4.3 Follow-on squeeze-out and sell-out right

(a) **Follow-on squeeze-out**: There are no regulations under Philippine law which allow for a "squeeze out" such that a bidder will be able to compel minority shareholders to sell their shares.

(b) **Sell-out right if the bidder is not itself launching a squeeze-out**: There are likewise no regulations under Philippine law allowing minority shareholders to sell-out their shares to a bidder following a take-over. In lieu of a squeeze out, the delisting rules of the PSE ("**Delisting Rules**") requires an applicant seeking to delist to show the PSE that following the acquisition of the tendered shares, such persons have obtained a total of at least 95% of the issued and outstanding listed securities of the applicant company. Furthermore, a reverse stock split which is also commonly implemented whereby a company will increase the par value of its shares resulting in a "fractionalization" of the shares held by the shareholders under the previous par value, that is, the reduction of a shareholders' shareholding into less than one share in the company.

5. Timeline

The takeover bid process for a mandatory public takeover is provided under the SRC IRR. The table below contains a summarized overview of the main steps of a typical mandatory public takeover bid process under Philippine law.

Step
1. Preparatory stage prior to pre-launch: • Preparation of the bid by the bidder (study, due diligence, financing, obtaining a third party fairness opinion/valuation report, cash/funds confirmation letter, terms and conditions of offer) • The bidder approaches the target and/or its key shareholders • Negotiations with the target and/or its key shareholders • Approval of board of directors for launch of offer • Voluntary trading halt
2. Announce intention to make an offer: • The offeror is required to make an announcement of its intention to make a tender offer in a national newspaper of general circulation either within (i) five business days from the approval by the board of directors of the selling shareholder(s) or the bidder relative to the purchase of shares that may result in a mandatory tender offer or (ii) 30 business days prior to the commencement of the tender offer.
3. Launching of the bid: • The offeror shall be required to file with the SEC (with a copy to the target public company at its principal executive office and to each exchange where the securities sought to be acquired are listed for trading), together with the prescribed filing fee, the Initial Tender Offer Report (SEC Form 19-1) and all applicable exhibits. The filing and receipt by the SEC of the Initial Tender Offer Report is generally considered to be the date when the tender offer is deemed to have formally commenced. • The offeror shall likewise publish the terms and conditions of the tender offer in two national newspapers of general circulation in the Philippines on the date of the commencement of the tender offer and for two consecutive days after compliance with the dissemination requirements under the Tender Offer Rules, including the distribution of notices to the holders of the class of securities sought to be acquired.
4. Offer Period: • A tender offer, unless withdrawn, shall remain open until the expiration of: (a) at least 20 business days from its commencement, except that a tender offer should to the extent possible be completed within 60 business days from the date the

Step	
	intention to make such offer is publicly announced; or (b) at least 10 business days from the date the notice of a change in the percentage of the class of securities being sought or in the consideration offered is first published, sent or given to holders of the class of securities sought to be acquired. • The offeror may not extend the period of a tender offer without prior clearance from the SEC through filing an exemptive relief application, and without issuing a notice of such extension by publication in a national newspaper of general circulation. The notice must disclose the total number of securities deposited or tendered to date and shall be made public not later than the scheduled original expiration date of the tender offer.
5.	Tender, Acceptance, and Termination of the Offer: • The offeror is required to permit holders of the securities tendered in a tender offer to withdraw the same (a) at any time during the period the tender offer remains open, and (b) if not yet accepted for payment, after the expiration of 60 business days from the commencement of the tender offer. • If the tender offer is for less than the total outstanding securities of a class, but a greater number of securities is tendered, the offeror shall be obliged to accept and pay for the securities on a pro rata basis, disregarding fractions, according to the number of securities tendered by each security holder during the period the offer was open. • In the event that the offeror increases the consideration offered after the tender offer has commenced, the offeror shall pay such increased consideration to all security holders whose tendered securities have been accepted for payment, whether or not the securities were tendered prior to the variation of the tender offer terms. • In a mandatory tender offer (that is, where the tender offer is required to be made to all holders of the class of securities sought to be acquired), the offeror shall be compelled to offer the highest price paid by it for such securities during the preceding six months. • If a tender offer has been announced but has not become unconditional and has been withdrawn or has lapsed, the offeror may not, without prior SEC approval, undertake a new tender offer or otherwise acquire securities of the target public company (which would require such person to make a mandatory tender offer) within six months from the date the tender offer had been withdrawn or had lapsed.
6.	No later than 10 business days after the termination of the tender offer (that is, after the lapse of the tender offer period or the settlement of the tendered shares, as applicable), the offeror is required to complete an amended Tender Offer Report (to reflect the results of the tender offer) and file the same with the SEC.

Set out below is an overview of the main steps for a mandatory public takeover in the Philippines.

Mandatory public takeover (indicative timeline)

Start process	A Day	L Day	T Day	E Day	P Day	C Day	X Day
	Offeror announces intention to make a tender offer in national newspaper[1]	Launch tender offer bid by filing Initial Tender Offer Report (SEC Form 19-1) with Philippines Securities & Exchange Commission (SEC)	Launch of tender offer acceptance period Publication of terms and conditions of tender offer on the date of the commencement of the tender offer and for two consecutive days thereafter	End of acceptance period[2]	Offeror files results of tender offer with SEC (Final and Amended Tender Offer Report)	Payment of the offered consideration as soon as possible after filing results with SEC on a variable date (Settlement Date)	Squeeze-out if permitted by articles of incorporation

Approximately 5 to 10 days (variable, no mandatory timeline)

20-60 business days

No later than 10 business days after the end of the offer

3-7 business days (variable, no mandatory date or timeline)

(1) Within (i) five business days from approval by the board of directors of the selling shareholders or the bidder or (ii) 30 business days prior to the commencement of the tender offer.

(2) The acceptance period shall remain open for at least 20 business days, except that a tender offer should to the extent possible be completed within 60 business days.

6. Takeover Tactics

6.1 Inside information

A Philippine company has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public.

"**Inside information**" or "**material non-public information**" means information that (a) has not been generally disclosed to the public, and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable amount of time for the market to absorb the information; or (b) would be considered by a reasonable person as important under the circumstances in determining their course of action whether to buy, sell, or hold a security.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the Philippine takeover bid rules provide that an announcement can be made of a potential takeover bid even without the prior approval by the SEC. However, the SRC IRR requires the mandatory submission of the announcement of intent to make an offer to the SEC immediately after its publication.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Philippine law is set forth in the SRC and SRC IRR. Under the SRC IRR, the following are considered as "**insiders**": (a) the issuer; (b) a director or officer (or any person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave them access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, director, or officer of an exchange, clearing agency, and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) any person who learns such information by a communication from any of the foregoing insiders.

Under Rule 27 the SRC IRR, the buying or selling of a security of an issuer by an insider thereof, while in possession of material non-public information with respect to the issuer or the security, is prohibited unless:

(a) the insider proves that the information was not gained from such relationship, or

(b) if the other party selling to or buying from the insider (or their agent) is identified, the insider proves (i) that the material non-public information was disclosed to the other party, or (ii) that the insider had reason to believe that the other party is also in possession of the same material non-public information.

An insider is further prohibited from communicating any material non-public information about an issuer or its securities to any person who, by virtue of the communication, becomes an insider, where the insider communicating the material non-public information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such material non-public information.

In the context of a potential or on-going tender offer, the following are likewise prohibited, and any violation thereof shall be considered as acts or instances of insider trading (or trading on the basis of material non-public information):

(a) Any person who becomes aware of a potential tender offer before the tender offer has been publicly announced may not buy or sell, directly or indirectly, the securities of the target public company (including any securities convertible or exchangeable into such securities, or any options or rights in any of the foregoing) until the tender offer shall has been publicly announced.

(b) Any person (other than the offeror) who is in possession of information relating to such tender offer, may not buy or sell the securities of the issuer that are sought or to be sought by such tender offer (including any securities convertible or exchangeable into such securities, or any options or rights in any of the foregoing) if such person knows or has reason to believe that the information is non-public and has been acquired, directly or indirectly, from the offeror, those acting on its behalf, the issuer of securities sought or to be sought by such tender offer, or any insider of such issuer.

(c) The offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer (including any securities convertible or exchangeable into such securities, or any options or rights in any of the foregoing), and any insider of such issuer may not communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of the rules and regulations on insider trading or trading on the basis of material non-public information.

In addition to the foregoing, the SRC likewise states that for the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner, director, or officer by reason of their relationship to the issuer, any profit realized by them from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.

6.4 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase by the board (authorized capital) without preferential subscription rights of the shareholders.	• Requires a majority vote of the board of directors and vote of stockholders representing or owning at least two-thirds of the outstanding capital stock entitled to vote. • The increase in capital stock requires prior approval of the SEC. • Note, however, that the SEC has frowned upon poison pill provisions for defeating the rights of minority shareholders.
2. Share buyback Share buyback	Re-acquisition of shares of issuer or target of its own securities shall only be made if the issuer has unrestricted retained earnings in its books to cover the amount of shares to be purchased and is undertaken for a legitimate corporate purpose.

Mechanism	Assessment and considerations
3. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a takeover bid.	Requires prior approval of the board of directors and the affirmative vote of the stockholders representing at least two-thirds of the outstanding capital of the Company
4. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• Only transactions which have sufficiently progressed already (prior to receipt of notification of a takeover bid) may be implemented by the target's board. • Other transactions require shareholders' approval after the takeover bid has been notified to the target.
5. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• The shareholders could be considered as "acting in concert". If so, rules on mandatory offer apply to them. • Assumes a stable shareholder base or reference shareholders.
6. Veto rights for certain shareholders Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms.	• Requires an express inclusion in the by-laws by a vote of stockholders owning or representing two-thirds of the outstanding capital stock entitled to vote. • Requires prior approval of the SEC for the amendment to by-laws. • Requires reference shareholder(s).
7. Limitations on share transfers Board approval or restriction clauses such as rights of first refusal in the articles of association or in agreements between shareholders.	• Inclusion in the articles of association requires an approval by a majority of the board of directors and vote of stockholders representing or owning at least 2/3 of the outstanding capital stock entitled to vote. • Pre-emptive rights or the right to subscribe to issuance of new shares in proportion to current shareholdings is expressly provided in the Corporation Code. Shareholders could be considered as "acting in concert". If so, see "Shareholders agreements" above.

Notwithstanding the foregoing, the SRC IRR provides that during a tender offer (or before its commencement, if the target public company's board of directors has reason to believe that an offer might be imminent), the target public company may not:

(a) issue any authorized but unissued shares;

(b) issue or grant options in respect of any unissued shares;

(c) create or issue, or permit the creation or issuance of, any securities carrying rights of conversion into, or subscription to, shares;

(d) sell, dispose of or acquire, or agree to acquire, any asset whose value amounts to 5% or more of the total value of the assets prior to acquisition; or

(e) enter into contracts that are not in the ordinary course of business;

except, in each case, if the transaction is (1) pursuant to a contract previously entered, (2) entered with the approval of the target public company's shareholders in a general meeting, or (3) with the prior approval of the SEC.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

There are no regulations under Philippine law allowing bidders to squeeze out minority shareholders such that the shareholders will be compelled to sell their shares to the bidder following a takeover. The same, however, may be provided for in the Articles of Incorporation of the target company.

7.2 Sell-out

There are likewise no regulations under Philippine law allowing minority shareholders to sell-out their shares to a bidder following a takeover. In lieu of a sell-out, the Delisting Rules permit a bidder or selling shareholders seeking to delist the target company to show the PSE that following the acquisition of the tendered shares, such person or persons have obtained a total of at least 95% of the issued and outstanding listed securities of the applicant company.

In addition to the foregoing, a reverse stock split is also commonly implemented whereby a company will increase the par value of its shares resulting in a "fractionalization" of the shares held by the shareholders under the previous par value, that is, the reduction of a shareholders' shareholding into less than one share in the company.

7.3 Restrictions to acquire securities after the takeover bid period

There are no regulations under Philippine law restricting a bidder from acquiring securities after a takeover bid period.

8. Delisting

Under the Delisting Rules, a listed company that has failed to comply with the minimum public ownership rule, or which engages in operations which are contrary to the public interest, among others, shall be considered for delisting. The procedure for involuntary delisting (on grounds other than non-compliance with the minimum public ownership requirement) is set forth in Supplemental Rule 8 of the Delisting Rules. Generally speaking, delisting may be ordered by the PSE after notice and hearing on the grounds for delisting.

Listed companies are likewise permitted to apply for voluntary delisting of their securities with the PSE, subject to compliance with the conditions under the Delisting Rules. Generally, the procedure for voluntary delisting begins with the filing of the petition for delisting with the PSE. However, action on the petition will be held in abeyance until such time that the company (or the persons seeking the delisting) is able to demonstrate compliance with all of the other conditions for voluntary delisting, in particular, the conduct and completion of the tender offer to all shareholders of record of the company as required under the Delisting Rules.

If after evaluation of the petition and the required documents, the PSE finds that the delisting will not prejudice the interests of investors, the PSE shall issue an order for delisting upon payment by the company of a voluntary delisting fee equivalent to its annual listing maintenance fee for the year when the application for delisting was filed.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Alain Charles J. Veloso and Luisa S. Fernandez-Guina in Manila are the most appropriate contacts within Quisumbing Torres* for inquiries about public M&A in the Philippines.

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Poland

1. Overview

Public merger and acquisition transactions are relatively common in Poland. Historically, the development of the Polish capital market, and, therefore, the market for corporate control, has been propelled by the privatization program implemented following the introduction of a market economy in 1989. The most notable merger and acquisition transactions in Poland have been acquisitions of formerly state-owned enterprises by Polish and foreign private investors. Currently, most takeover bids are acquisitions of private companies by strategic investors, exits by private equity houses and going private transactions. Takeovers usually take the form of a friendly acquisition preceded by negotiations between the exiting major shareholder and the new strategic investor, followed by a takeover bid addressed to all other shareholders of the target. Unsolicited or hostile takeover bids are rare, and most of them are unsuccessful. The number of takeover bids involving shares in companies listed on the Warsaw Stock Exchange ("**WSE**") resulting from public to private transactions is expected to increase in the near future due to market conditions.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Polish law relating to public takeover bids can be found in:

- The Act of 29 July 2005 on Public Offerings, the Listing of Financial Instruments and Public Companies (as amended) ("**Public Offering Act**"); and
- The Regulation of the Minister of Finance of 23 May 2022 on Forms of Documents for Tender Offers for the Sale or Exchange of Shares of a Public Company, the Manner and Procedure for Submitting and Accepting Subscriptions under Tender Offers and Permitted Types of Collateral ("**Tender Offer Regulation**").

The provisions of the Public Offering Act relating to public takeover bids were significantly amended with effect from 30 May 2022. Following this amendment, a single threshold of 50% of the total number of votes at the target company has been introduced and it is no longer possible under Polish law to announce a takeover bid (whether voluntary or mandatory) in respect of less than 100% of the remaining shares of the target company (i.e., shares not held by a bidder).

The main body of the Polish takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). The Takeover Directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the European Economic Area (EEA). However, the Takeover Directive still allows Member States to apply different approaches in connection with some important features of public takeover bids (such as the percentage of votes that, upon acquisition, triggers a mandatory public takeover bid in respect of the remaining shares of the target company, and management board powers). Consequently, salient differences remain in the national rules of EEA Member States applicable to public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation forms the main legal framework for public takeover bids in Poland, there are a number of additional rules and principles that need to be taken into account when preparing or staging a public takeover bid, such as:

(a) The rules relating to the disclosure of major shareholdings in listed companies (transparency rules) included in the Public Offerings Act. These rules are based on

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules) included in the EU Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("**Market Abuse Regulation**"). For further information, see 6.3 below.

(c) The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market are mainly contained in Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, other related EU legal acts and in the Public Offering Act. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities.

(d) The general rules on the exercise of supervision and control over the financial markets contained in the Polish Act of 29 July 2005 on Capital Market Oversight.

(e) The rules and regulations regarding merger control.

There are also some further rules that need to be observed when preparing and implementing a public takeover bid, such as the listing rules in force on the stock exchange concerned and Polish corporate law rules.

2.3 Takeover rules applicable to foreign target companies

In the case of foreign targets, certain foreign laws may apply, such as those which impose disclosure and notification obligations. Each cross-border transaction should be analyzed on a case-by-case basis to establish which laws apply to which matters with a view to avoiding contradictions and to maintaining shareholder protection.

2.4 Key regulatory authority

Public takeover bids are subject to the supervision and control of the PFSA. The PFSA is the principal securities regulator in Poland. The PFSA has a number of legal tools that it can use to exercise oversight and enforce compliance with the public takeover bid rules, including the imposition of administrative fines. In addition, the ordinary courts can also apply criminal penalties for non-compliance. The PFSA also has the power (in certain cases) to grant exemptions from the rules that would otherwise apply to a public takeover bid.

2.5 Foreign investment restrictions

Foreign investments are generally not subject to any restrictions in Poland. Under constitutional guarantees and foreign investment regulations, foreign investment is treated in the same way as any investment undertaken by Polish and EU-nationals. In general, there are no foreign exchange controls or rules that create specific requirements in respect of foreign exchange controls or of foreign investments in Polish companies. Restrictions on foreign ownership have generally been lifted except for a very limited number of specific areas of business:

(a) Competition law

The notification of a transaction to the president of the Office of Competition and Consumer Protection is required if:

(i) the combined worldwide turnover of all the undertakings involved in the concentration exceeds the equivalent of EUR 1 billion in the financial year preceding the year in which the notification is made; or

(ii) the combined turnover in Poland of all the undertakings involved in the concentration exceeds the equivalent of EUR 50 million in the financial year preceding the year in which the notification is submitted;

unless, in either case, the target company's turnover in any of the two financial years preceding the year in which the notification is submitted did not exceed the equivalent of EUR 10 million in Poland. If the transaction has a Community dimension, this has to be notified to the European Commission (notification to the president of the Office of Competition and Consumer Protection is not required then).

A Polish merger notification is suspensory, meaning that approval must be obtained prior to closing. In a public takeover bid, shares may be acquired before a decision is issued provided that the bidder does not exercise the voting rights attached to those shares, or exercises those rights only with a view to maintaining the full value of its capital investment or to avoiding serious harm to the undertakings involved in the concentration.

Similar regulations also apply in the case of the EU rules, with the exception that the acquirer may only exercise such voting rights to maintain the full value of its investment on the basis of a derogation granted by the European Commission. In general, the notification is submitted after the announcement of a takeover bid.

Polish law provides for two-phase proceedings. If the transaction does not give rise to competition law concerns, a decision is issued within one month of the date of notification. However, this deadline may be extended by four months if: (i) the case is complicated; (ii) there is a justified probability of a significant restriction of competition on the market; or (iii) a market investigation is required.

The scope of information to be provided, i.e., whether a short or long form version of the merger notification is needed, depends on whether any of the affected markets identified cover the territory of Poland or a part of it, i.e.: (i) the parties are competitors and their joint market shares exceed 20% of the relevant market identified; or (ii) there is an actual and/or potential vertical relationship between the parties (supplier-buyer relationship) and at least one party exceeds 30% on the relevant market identified as being a vertically related market.

Under rules introduced in response to COVID-19, among other things, all Polish public companies (i.e., where at least one share is admitted to trading on a regulated market or introduced to trading on a multilateral trading facility ("**MTF**") in Poland) are subject to the foreign direct investment ("**FDI**") requirement and to an additional notification obligation in relation to the president of the Office of Competition and Consumer Protection, provided that: (i) in any of the two financial years preceding the year in which the notification is made, the Polish company's revenue from sales and services exceeded in Poland the equivalent of EUR 10 million; and (ii) the acquirer has its seat outside the EU, EEA or OECD. The current FDI provisions are valid until 24 July 2025.

(b) Permit for the acquisition of real property or shares in a company holding real property

The purchase of real property by foreigners is governed by the provisions of the Act on the Purchase of Real Estate by Foreigners. With certain exceptions, e.g., a company's transformation, a permit is required for each purchase of real property, i.e., acquiring the ownership title or the perpetual usufruct right to a real property or purchase, or taking up shares in a company which has a registered place of business in Poland and is the legal owner or perpetual usufructuary of real property. A permit is required if, by purchasing shares in a company which is the legal owner or perpetual usufructuary of real property, a foreigner takes control of such company. A permit is also required if the shares in an already-controlled company are acquired or taken up by a foreigner who is not a shareholder of the company. The Minister of Internal Affairs may grant a foreigner a permit to purchase real property or shares in a company owning real property if no objection is raised by the Minister of National Defense and there is no probability of a threat to national security, public safety or public order, and if the foreigner can demonstrate the existence of circumstances confirming their ties with Poland.

Specific limitations also apply to the sale of real property located in "Special Economic Zones" (*Specjalne Strefy Ekonomiczne*). In this case, the Special Economic Zone's managing entity has a pre-emptive right to acquire the land.

(c) The acquisition of agricultural real property or shares in a company holding agricultural real property

The Act on Shaping the Agricultural System introduced several limitations on transferring the legal title to agricultural real property, transferring shares in companies holding agricultural property or reorganizations of companies holding ownership or perpetual usufruct rights to agricultural real property.

In principle, agricultural land may only be acquired by persons meeting certain criteria (such as individual farmers). Other entities are obliged to obtain the consent of the Head of National Agricultural Support Centre (NASC) before the effective transfer of the title to the land. There are several exceptions to this. Among others, the limitations do not apply to agricultural real property of a specific size or that are located on areas designated in local zoning plans for non-agricultural purposes. The NASC also has a pre-emptive right in relation to the purchase of shares in companies which hold the ownership title to agricultural real property. However, this pre-emptive right does not apply to the sale of shares on the stock exchange. The NASC also has various other rights relating to mergers, divisions, transformations and acquisitions of shares in companies holding agricultural real property. These limitations are taken into account when structuring a transaction, most commonly as conditions for closing.

Additionally, other state agencies, e.g., State Forests and communes, may be granted a pre-emptive right on the basis of other regulations, depending on the status and location of the real property. Therefore, it is important to verify the status of the real property prior to the transaction.

(d) Transaction permits

Under the Act of Control of Certain Investments, transactions resulting in the acquisition or achievement of a significant interest or a dominant position in a company that is an entity subject to protection, are subject to the purview of the controlling authority, i.e., the competent minister for energy matters or the Prime Minister (in particular, transactions regarding strategic companies – however, this should be understood as strategic from a security angle, rather than an economic one). A dominant position is understood as the acquisition of 50% or more of the total number of votes in the governing body or shares in the share capital, while acquisition or achievement of significant participation is defined as achieving or exceeding, respectively, 20%, 25%, 33% of share capital or the total number of votes at the general meeting as well as the acquisition from a protected entity of an enterprise or an organized part thereof. The controlling authority can submit an objection to the transaction.

(e) Protection against expropriation

The rules of protection against expropriation are the same for both Polish and foreign entities. Thus, according to the Polish Constitution, the State protects ownership, and expropriation is admissible only for public purposes and in exchange for just compensation. Expropriation may only take place in relation to public purposes projects such as are provided for by acts of Parliament.

(f) Other regulatory requirements

For acquisitions of control of financial institutions, e.g., banks, insurance companies, investment and pension funds, investment firms, and of companies operating in specific sectors, such as telecommunications, energy, the media, airway and railway transport sectors, the approval of the relevant industry regulator is usually required before a share sale transaction due to the change of control. The definition of control and the rules for the issuance of this regulatory approval vary according to the rules of the specific regulatory authority and depending on the specific sector or industry. These regulations are applied equally to foreign and domestic investors. In asset transactions in a regulated industry or sector, it is usually required to obtain new permits and approvals for operation.

2.6 General principles

The following general principles apply to public takeovers in Poland. These rules are based on the Takeover Directive:

(a) all holders of the securities of a target company of the same class must be treated equally. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. This results in the duty to announce a takeover bid and publish a takeover bid circular and the duty to publish an opinion by the board of the target company giving its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the target company, the bidder or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) a bidder must announce a bid only after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration, and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different shareholding levels within a listed Polish corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting or in writing prior to the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons. • The right to file a liability claim against directors or to request the nullity of a transaction on behalf of the company if such claim is not filed by the company. • The right (under certain conditions) to request that a shareholder holding at least 95% of the total number of votes in the company buys out shares held by the minority shareholder/s (sell-out).
5%	• The right to put additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda. • The right to request the management board to convene a general shareholders' meeting. • The right to ask, subject to certain conditions, the general meeting of shareholders or, if the general meeting fails to do so, the registration court, to appoint an expert (*rewident do spraw szczególnych*) to check the company's books, financial records and the actions of the company's corporate bodies.
More than 10%	The ability at a general shareholders' meeting to block resolutions on delisting the company.
20%	The right to appoint a representative to the supervisory board.
More than 20% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in the event of share issues; this also applies to issues of convertible bonds or warrants and other similar securities.

Shareholding	Rights
More than 25% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block: • issues of new shares with pre-emptive rights for existing shareholders; • any other changes to the articles of association, mergers, de-mergers, spin-offs, capital increases, capital reductions, and dissolution of the company; • the authorization to the board of directors to increase the company's share capital without further shareholder approval ("**authorized capital**"), and • issues of convertible bonds or warrants.
More than 33% (quorum)	• The adoption by a general meeting of a resolution to increase share capital that provides for new shares to be taken up through private placement or open subscription by a designated addressee requires the presence of shareholders representing at least 33% of the share capital. • A resolution of the general meeting on amendments to the statutes authorizing the management board to increase the share capital within the limits of the authorized capital and conditional share capital requires the presence of shareholders representing at least 33% of the share capital.
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to: • approve the payment of dividends; • appoint and dismiss members of the supervisory board and to approve their remuneration and, if applicable, severance packages; • appoint and dismiss statutory auditors and to approve their remuneration; • approve the annual financial statements; • grant discharge from liability to the directors and statutory auditors for the performance of their mandate; and • take any other decisions for which no special majority is required.
66% (at a shareholders' meeting)	The possibility to adopt resolutions on: • the merger of the company (for public companies); • the split of the company (for public companies); • the adjournment of the general meeting;

Shareholding	Rights
	• the financing by the company of the acquisition/subscription of its own shares (however, in case of a 50% share capital quorum, an absolute majority of votes is sufficient) (financial assistance); and • a significant change in the company's scope of business.
75% (at a shareholders' meeting)	The possibility to adopt resolutions on: • the issuance of convertible bonds and bonds with pre-emptive rights to acquire shares; • the amendment of the articles of association; • the redemption of shares; • the reduction of share capital; • the increase of share capital (including conditional capital and the creation of authorized capital); • the disposal of an enterprise or an organized part of it; • the dissolution of the company; • participation in a formal holding structure (*grupa spółek*); and • a merger/split of the company (for non-public companies).
80% (at a shareholders' meeting)	The possibility to adopt a resolution on the exclusion of shareholders' pre-emptive rights.
90% (at a shareholders' meeting)	The possibility to adopt a resolution on the delisting of the company from the stock exchange (with a 50% quorum).
95%	The possibility to force all other shareholders in a private company to sell their shares ("**squeeze-out**").

3.2 Selected aspects of the pre-acquisition phase

Polish law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions on, among other things, prior stake building by a bidder, the publication of the intention to announce a takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start a process that is to lead to a public takeover bid.

(a) Collateral

The bidder is required to establish collateral in favor of the broker in an amount corresponding to no less than 100% of the value of the shares to be acquired during the takeover bid. The collateral can take the form of: (i) a bank guarantee/suretyship; (ii) insurance cover; (iii) the blocking of cash funds on a bank account; or (iv) the blocking of shares or bonds. It should be possible to realize the collateral immediately after the expiry of the term for the purchase of the shares subscribed for in the takeover bid. The bank or other financial institution providing or acting as an intermediary in providing the collateral is required to issue a document confirming the establishment of the collateral (filed with the PFSA together with the takeover circular).

(b) Insider dealing and market abuse

Before, during and after a takeover bid, the general rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules prohibit the manipulation of a target's stock price by creating misleading rumors, for example. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information on a target company (other than in relation to the actual takeover bid itself) from purchasing any shares in a takeover bid.

(c) Stake building and disclosure of shareholdings

A bidder may have various reasons for building a stake in a target company before launching a bid. However, hidden stake building is limited due to the obligation to disclose major shareholdings in listed companies and their potential impact on price-setting in takeover bids.

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid. Under these rules, if a potential bidder starts building up a stake in a target company, it will be obliged to disclose its stake if the voting rights attached to its stake exceed a particular disclosure threshold. The relevant disclosure thresholds in Poland are 5% and then 10%, 15%, 20%, 25%, 33%, 33 1/3%, 50%, 75% and 90%. In addition, a shareholder who holds over 10% must report any change of shareholding (either up or down) of at least 2% (in a public company whose shares are admitted to trading on the official listing market, i.e. the WSE main market (*rynek podstawowy*)) or 5% (in a public company whose shares are admitted to trading on another regulated market), and a shareholder who holds over 33% must report any change of shareholding (either up or down) of at least 1%. The bidder is obliged to inform the PFSA and the target of the abovementioned changes no later than six trading days after the transaction date or four working days (in the case of OTC transactions). The target should promptly provide this information to the public at the same time (by way of a current report), the PFSA and the WSE.

When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These circumstances include affiliates and indirect acquisitions (the purchase of shares in an entity that is dominant in relation to the target). Such parties can also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements, e.g., relating to voting at the target company's shareholders' meeting.

In addition to complying with the disclosure rules, a bidder also needs to comply with pricing rules. As will be set out further below (see 4), the acquisition price during the 12-month period before the offer is relevant when determining the minimum price to be offered in the bid.

(d) Contacting the target company and disclosures by the target company

The bidder does not need to formally notify the target company that a takeover bid has been launched. However, if the bidder is interested in pursuing a public takeover and wishes to, for example, secure the support of the target's board, the bidder's first step could be to approach the board of the target. If both the bidder and the target are interested in evaluating the takeover bid, they usually enter into a confidentiality agreement, which is sometimes combined with a standstill clause in agreements with the target. In the confidentiality agreement, the target company and the bidder agree to maintain confidentiality about the transaction, the negotiations and all information disclosed to any party during the negotiations.

The target company must also continue to comply with the general rules regarding disclosure and transparency. These rules include the requirement that a company must immediately announce all inside (price-sensitive) information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. Therefore, if the target company receives information about a contemplated public takeover bid or if there are rumors or leaks that a (potential) bidder intends to launch a public takeover bid (and the target company has confirmed that the information or rumors are correct), the target company may be obliged to announce this in accordance with the applicable disclosure obligations.

However, the board of the target company can delay the announcement if all the applicable requirements under the Market Abuse Regulation are met, especially if it believes that a disclosure would not be in the legitimate interest of the company or if there is a non-disclosure agreement between the bidder and the target company. For instance, this could be the case if the target's board believes that early disclosure would prejudice the negotiations regarding a bid. However, the delaying of an announcement is only permitted if non-disclosure does not entail the risk of the public being misled, and if the company can keep the relevant information confidential.

(e) Due diligence

The Polish public takeover bid rules do not contain specific rules regarding the question of whether any prior due diligence can be performed, or how such due diligence is to be organized. However, the concept of a prior due diligence or a pre-acquisition review by a bidder is generally accepted on the market and by the PFSA. Appropriate mechanisms have been developed in practice for organizing due diligence or pre-acquisition reviews and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms. In order to simplify access to information during a due diligence process, the investor and the target company can enter into an investment agreement in order to agree on the terms and conditions of future cooperation. However, it is quite common for a takeover bid to proceed without prior due diligence of the target or with due diligence based solely on public disclosures made by the target company.

(f) Transaction agreement

If the bidder intends to acquire a large stake in the target company from specific shareholders, it is possible for the bidder and the relevant shareholders to enter into a transaction agreement (typically referred to as a takeover bid subscription agreement or a share purchase agreement). The transaction agreement is signed immediately prior to the launch of the public takeover. The transaction agreement is usually preceded by a confidentiality agreement (including standstill provisions).

The following items are typically covered by a transaction agreement:

- Structure of the transaction (including price, offer conditions and timetable) and content of the takeover documents;
- Obligation of the bidder to announce the takeover bid and of the shareholder(s) to subscribe for the shares in response to the takeover bid;
- Influence of the shareholder(s) towards the target company during the takeover, including the target's business and trading in shares and financial instruments of the target;
- Obligations and restrictions relating to takeover bids for the target company's shares potentially announced by competing bidders;
- Support regarding regulatory filings and registration in the shareholders' register post-acquisition; and
- Confidentiality and communication strategy.

Parties entering into a transaction agreement in connection with the bid may qualify as persons acting in concert with respect to the bid, which should be analyzed on a case-by-case basis.

3.3 Acting in concert

For the purposes of Polish takeover bid rules, persons "act in concert":

- if they collaborate with the bidder or with any affiliate of the bidder on the basis of an explicit or implicit, oral or written, agreement aimed at acquiring shares in the target company, coordinated voting at general shareholders' meetings of the target company, or maintaining a common policy in relation to the target company;
- if they hold or acquire shares in the target on behalf of or for the account of the bidder;
- if they are proxies of the bidder with discretionary voting powers at the general shareholders' meetings of the target company; or
- if they are affiliates of the bidder.

In view of the above rules and criteria, the target company could be one of the entities with which a shareholder acts in concert or is deemed to act in concert. For example, this is the case when a target company is already controlled by a shareholder. This may be significant if the target company has some treasury shares, in which case it may be required to include them together with a stake held by the relevant controlling shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would exceed the 50% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not exceed the 50% threshold.

4. Effecting a Takeover

There are three main forms of takeover bids in Poland:

- a mandatory (follow-up) takeover bid, which a bidder is required to make if it exceeds (alone or acting in concert with other entities) a threshold of 50% of the votes in the target company;
- a voluntary (prior) takeover bid, in which a bidder voluntarily makes an offer for all of the shares issued by the target company without triggering the mandatory takeover bid and irrespective of the exceeding of any thresholds; and
- a delisting bid, which a bidder is required to make prior to delisting the target company.

As a result of the amendments to the Public Offering Act, the obligation to announce a prior takeover bid in order to exceed the 33% or 66% thresholds of the total number of votes in the target was replaced with a single takeover bid threshold set at the level of 50% of the total number of votes in the target, requiring the announcement of a follow-up takeover bid for all the remaining shares in the target. According to a temporary provision, shareholders holding more than 50% and less than 66% of the total number of votes in the target company will be obligated to announce a takeover bid for all the remaining shares if, after 30 May 2022, their stake in the company is increased for any reason (including, among other things, the acquisition of shares or redemption of shares held by other shareholders).

A bidder that intends to launch a voluntary, mandatory or delisting takeover bid must file, via a broker, a notification of the intention to announce a takeover bid by means of a several-page takeover circular with the PFSA as well as proof of the establishment of collateral in favor of the broker an amount corresponding to not less than 100% of the value of the shares to be acquired during the takeover bid.

The collateral must be established in one of the forms set forth in the Tender Offer Regulation, i.e., a guarantee or assurance issued by a bank or another financial institution; insurance cover; the blocking of cash funds on a bank account, or the blocking of shares or bonds.

No prospectus needs to be prepared in connection with a takeover bid, except for an exchange offer where securities are offered as consideration.

During the takeover bid period (starting on the date of the filing with the PFSA of the intention to announce a takeover bid), the bidder (or its affiliates and persons acting in concert) may not purchase directly or indirectly any shares in the target company outside the public takeover bid (nor sell or agree to sell shares in the target company).

4.1 Mandatory public takeover bid

(a) Threshold

When the threshold of 50% of the votes in the target company is exceeded (by the bidder, together with affiliates and persons acting in concert), the bidder is obliged to announce a follow-up takeover bid for all the remaining shares of the target company within three months of exceeding the threshold.

The mandatory takeover bid is triggered regardless of whether the bidder crossed the 50% threshold intentionally or unintentionally, e.g., due to a share capital reduction. There is no obligation to announce a mandatory takeover bid if the threshold of 50% of the total number of votes in the company has been exceeded as a result of a prior voluntary takeover bid.

(b) Exceptions

The main exceptions to the mandatory takeover bid obligation include situations where:

- the stake is acquired from an affiliate;
- the stake is acquired as party of a bankruptcy estate or from a court bailiff;
- the target's shares are traded exclusively on an MTF;
- the stake is acquired through the enforcement of a security interest, and
- the stake is acquired from the State Treasury in certain instances of privatization.

Also, the announcement of the mandatory takeover bid is not required under the following circumstances:

- the 50% threshold was exceeded as a result of the announcement of a prior voluntary takeover bid, or
- within three months after exceeding the 50% threshold, the bidder's stake falls below 50% due to:
    - an increase in the target's share capital;
    - a change in the target's articles of association; or
    - the expiry of the shares privilege (but not the disposal of shares).

The obligation to announce a takeover bid prevails even if the bidder reduces its stake to below the 50% of votes threshold, as such situation is not covered by the exceptions stated above.

(c) Conditions precedent

As mandatory takeover bids cannot be conditional:

- Any potential antitrust clearance or other regulatory approvals (including the FDI procedure) should take place before the mandatory takeover bid is announced.
- The bidder may recall an announced mandatory takeover bid only if another entity announces another unconditional takeover bid in which the share price is higher.

(d) Dual-listing and foreign-incorporated companies listed in Poland

In the case of a foreign-incorporated public company whose shares:

- are admitted to trading on a regulated market exclusively on the territory of the Republic of Poland;
- have been admitted to trading for the first time on a regulated market on the territory of the Republic of Poland and are admitted to trading on a regulated market in another Member State which is not the target's country of incorporation;

- have been simultaneously admitted to trading on a regulated market on the territory of the Republic of Poland and in another Member State that is not the country of the company's headquarters - if the company has designated the PFSA as the authority competent to supervise takeover bids,

the obligation to launch a mandatory takeover bid based on Polish regulations does not apply and the bidder is required to undertake the process in accordance with the regulations relevant to the target's country of incorporation with the exception of the Public Offering Act and Tender Offer Regulation provisions concerning the subject of the consideration offered in the takeover bid, the price of the shares proposed in the takeover bid and the procedure for conducting the takeover bid, especially with regard to its content and the procedure for announcing it.

In the case of a foreign-incorporated public company whose shares:

- are admitted to trading on a regulated market in the Member State in which the company has its registered office and are admitted to trading on a regulated market on the territory of the Republic of Poland,
- are admitted to trading for the first time on a regulated market in a Member State other than the Republic of Poland, which is not the country of the company's headquarters, and are admitted to trading on a regulated market on the territory of the Republic of Poland,
- are simultaneously admitted to trading on a regulated market on the territory of the Republic of Poland and on a regulated market in a Member State other than the Republic of Poland that is not the country of the company's registered office - if the company has designated the supervisory authority in that other country as the authority competent to supervise takeover bids,

Polish law provisions regarding public takeover bids do not apply.

In the case of a dual-listing carried out without the consent of the company (possible in cases when the shares in such company are already listed on another regulated market), the entity that has applied for the admission of such shares to trading on a regulated market in Poland, in the event of their withdrawal from trading on another regulated market, must announce a takeover bid for all of the shares in such company that have been acquired as a result of transactions concluded in Poland and that are recorded in securities accounts maintained in Poland.

4.2 Voluntary public takeover bid

(a) Threshold

The acquisition of more than 50% of the total number of votes at the target company's general meeting can be executed by a prior takeover bid for 100% of the shares in the target company.

If the threshold of 50% of the total number of votes in the target company is exceeded as a result of a voluntary bid before the threshold is exceeded, the bidder is not required to launch a follow-up mandatory bid (which would otherwise be the case once the 50% threshold is crossed – please see 4.1(a)).

No takeover bid needs to be announced if a bidder wants to reach up to 50% of the total number of votes in the target company.

(b) Conditions precedent

The bidder is free to make the takeover bid subject to merger control clearance (if relevant merger control thresholds are met) and certain other conditions precedent, such as a minimum acceptance level (jointly with the shares held by the bidder, its affiliates and persons acting in concert, capped at 50% of the votes in the target company), that the target company enters into a certain agreement, that the target company's general meeting passes a particular resolution or that the bidder's general meeting or another governing/supervisory body gives its consent to the transaction, as required by applicable law. Lack of material adverse change or satisfactory results of due diligence are not acceptable conditions. As a rule, the bidder may waive the conditions precedent (other than those relating to the competent authority's approval) during the subscription period.

Unless the target company is in a regulated industry, e.g., banking or insurance, no prior approval of any regulatory authority is required to launch a takeover bid. Polish law imposes restrictions on the acquisition of large shareholdings (over 20%) in certain companies of strategic importance for the Polish state. The list of such companies is updated from time to time by the Polish government.

4.3 Delisting public takeover bid

(a) Threshold

A delisting takeover bid is announced if the bidder wants to delist the target from the WSE and holds less than 100% of the total number of votes in the target company. In practice, a delisting takeover bid is announced if the bidder holds between 90% and 95% of the total number of votes in the target (i.e., enough to vote for a delisting at the target company's shareholders' meeting but not enough to squeeze out the minority shareholders of the target company). It is a prior public takeover bid for 100% of the shares in the target, applicable to all listed companies (regulated market and MTF) and should be announced prior to a shareholder request on the adoption of a delisting resolution by the target's shareholders' meeting. The procedure for a delisting takeover bid is substantially the same as the procedure applicable to voluntary and mandatory takeover bids (i.e., a step plan and price calculation mechanism).

(b) Conditions precedent

A delisting takeover bid cannot be conditional. To delist the target, investors can decide to announce either a voluntary takeover bid or a delisting takeover bid. In practice, if any conditions precedent are envisaged, investors may prefer to first announce a voluntary takeover bid for all the shares of the target. However, if as a result of the voluntary takeover bid, the bidder acquires less than 95% of the total number of votes in the target (this threshold allows a squeeze-out procedure to be initiated), an additional delisting takeover bid may be required.

4.4 Public takeover price

The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders subject to the following key terms:

- The price offered is payable in cash, securities or a combination of both. Consideration consisting of securities may generally comprise the shares in another Polish-listed company or other securities admitted to trading on a regulated market or introduced to trading in an alternative trading system which grant voting rights in a

Polish-listed company (provided that a cash alternative is also offered in an amount corresponding to the cash value of the consideration in securities).

- The price in the takeover bid may not be lower than the minimum price required by law. The price for the shares in a public takeover bid may not be less than:
  - the arithmetic mean of the market price for which the shares were sold on the WSE established on the basis of the daily volume-weighted average price (VWAP) in the last six months and three months (or a shorter period if the shares were traded on the WSE for a period shorter than six months) prior to submitting the notice on the intention to announce a takeover bid to the PFSA,
  - the highest price paid (or the payment of which has been agreed, by way of a put option, for example) or the highest value of items or rights given away by the bidder, its subsidiary, its dominant entity or any entity acting "in concert" with the bidder during the 12 months prior to submitting the notice on the intention to announce a takeover bid to the PFSA (if applicable),
  - the indirect share purchase price paid by the bidder, its subsidiary, its dominant entity or any entity acting "in concert" with the bidder for the target company's shares in connection with the indirect acquisition of the target company's shares that took place in the 12 months prior to the submission to the PFSA of notification of the intention to launch a takeover bid (as determined by an audit firm selected by the bidder),
- The fair value of the shares (as determined by an audit firm selected by the bidder), if:
  - it is not possible to determine the price as described above, or if the target company is subject to restructuring or bankruptcy proceedings,
  - during the last three months, shares of the target were traded in less than 1/3 of the sessions and if at least 1/3 of those sessions noted a difference of at least 5% in the closing price of the shares compared with the closing price in the previous session in that period,
  - the volume of trading of the target company's shares on a regulated market or on a MTF (in the case of delisting bids) in the six months preceding the delivery of a notice of the intention to announce a takeover bid constitutes less than 1% of all the target's shares admitted to trading on a regulated market or introduced to trading on a MTF.
- There may be different prices paid for different voting classes of shares in the target. Usually, however, one price is offered for all the shares in the target, regardless of their voting rights. However, the price may be lower than that calculated pursuant to the principles discussed above if at least 5% of the total number of the target company's shares are to be acquired from a particular shareholder, and both the bidder and such shareholder agree to set the price at such lower level.
- In the course of a takeover bid, the price for the tendered shares may be changed (increased or decreased) by the bidder not more often than every five business days. If a competitive takeover bid was announced or the price in such takeover bid was changed, the period of five days is not applicable.
- If the price is changed: (i) the amount of the collateral needs to be immediately supplemented by an amount corresponding to not less than 100% of the value of the

tendered shares; (ii) the bidder should pay a new increased price to all shareholders who have subscribed for the shares before the price increase was announced; and (iii) the bidder should pay the initial price to all shareholders who subscribed for the shares before the price decrease was announced.

- If, within six months from the end of a takeover bid, the bidder has directly or indirectly acquired further shares in the target, other than during the course of the takeover bid, at a price higher than the price specified in the previous takeover bid, it is obliged, within one month of that acquisition, to pay the difference in price to all shareholders who sold shares in that takeover bid, excluding shareholders from whom the shares were acquired at a reduced price. This obligation does not arise in the event of a squeeze-out.
- In the event of the approval by means of a valid court judgment of a claim for payment of a price in a takeover bid that is higher than that determined by the bidder on the basis of the abovementioned principles, the bidder is obliged to pay the difference in price to all shareholders who sold shares in the takeover bid, regardless of whether they were the ones who instituted the claim, within one month of the court judgment becoming valid.
- In the case of a delisting takeover bid for shares in a target listed on an MTF (NewConnect), the price for the shares may not be lower than the arithmetic mean of the market price for which the shares were sold on such market in the last six months as established on the basis of the daily VWAP, and if the shares were sold within a shorter period of time, the average market price for such shorter period (but, in any case, for not less than the average market price for the last three months).
- The price in a public takeover bid for the exchange of shares should be the value of the shares to be exchanged for the target company's shares, which is determined as follows:
    - for shares traded on a regulated market: on the basis of the arithmetic mean of the market price for which the shares were sold established on the basis of the daily VWAP in the six months prior to the date of the announcement of the takeover bid (if the shares were traded on a regulated market for less than six months, the average daily VWAP for such shorter period),
    - for shares whose value cannot be determined pursuant to the above rules: on the basis of their fair value.

4.5 Follow-on squeeze-out and sell-out right

(a) Follow-on squeeze-out - a bidder will be able to squeeze out the residual minority shareholders if, for any reason (including successful completion of a takeover bid), it holds, alone or in concert with others, 95% of the total number of votes in the target.

(b) Sell-out right - if the bidder is not itself launching a squeeze- out - minority shareholders have a sell-out right if, for any reason (including successful completion of a takeover bid), the bidder holds, alone or in concert with others, 95% of the total number of votes in the target.

(c) The squeeze-out and sell-out may be effected within three months following the date on which the bidder crosses the threshold of 95% of the total number of votes in the target.

5. Timeline

A bidder that intends to announce a public takeover bid must first inform the PFSA, via a securities broker acting as an intermediary, of its intention to do so, attaching the takeover circular and the confirmation of the establishment of collateral for the purpose of the takeover bid. The notification is filed in electronic form using the system available on the PFSA website (not later than 17 business days prior to the expected date of the takeover bid announcement). No PFSA approval is required to launch the bid.

Immediately, but not later than 24 hours after filing the notification of the intention to announce the public takeover bid, the broker submits to an information agency (i.e., the Polish Press Agency) information relating to the bidder and the broker, the number of tendered shares and the price and the exchange ratio, which are then published by the information agency and on the broker's website (although at such time the public takeover bid is not yet formally launched). As soon as the public takeover bid is announced, it can normally no longer be withdrawn, except in certain specific circumstances.

The PFSA can comment on the takeover circular, ask for explanations, or request changes in the collateral (within 10 business days from submission, but this period can be extended to 15 business days). After 17 business days from informing the PFSA of the intention to announce a takeover bid, the takeover circular is published by at least one information agency and on the broker's website. The PFSA can block the takeover if it finds that it violates the law or if the takeover document does not include all the required information.

The PFSA cannot force the bidder to accelerate the announcement of a takeover bid. However, it does have the right to request a person who could be involved in a possible public takeover bid to make an announcement without delay or, if the latter person does not make such disclosure, to make the announcement instead.

The table below contains an overview in summary form of the main steps of a typical public takeover bid process under Polish law.

Step
1. Preparatory stage: • Preparation of the bid by the bidder (study, public sources due diligence and arranging financing). • The bidder approaches the target and/or its key shareholders. • Conclusion of the non-disclosure agreement. • Engagement of a Polish investment firm (securities broker) to act as an intermediary in the bid. • Appointment of the relevant advisers. • Due diligence of the target company. • Preparation and negotiations with the target and/or its key shareholders of transaction documents. • Preparation of a takeover circular. • Preparation and negotiations of an acquisition finance package.

Step
• Establishment of collateral for the tendered shares. • Preparation of an antitrust clearance notification and/or other regulatory filings (e.g., FDI) (if required).
2. Execution stage: • Entering into transaction documents, i.e. share transfer undertakings, non-disclosure agreements, term sheets, preliminary agreements with key shareholders (which may trigger information disclosure obligations under the Market Abuse Regulation). • The broker, on behalf of the bidder, informs the PFSA of the acquirer's intention to announce the takeover bid and delivers a takeover bid circular and a document confirming the establishment of the collateral in electronic form via the system available on the PFSA website (not later than 17 business days prior to the expected date of the takeover bid announcement). • Immediately (but not later than 24 hours after the above) the investment firm submits to an information agency (i.e., the Polish Press Agency) information relating to the acquirer and the broker, the number of tendered shares, the price and the exchange ratio, which are then published by the information agency and on the broker's website. • No filing with the target is required. The target learns of the bid through newswires and other public sources. • Counter-bids and higher bids can be filed at any time.
3. Review of the takeover circular by the PFSA: The PFSA can comment on the takeover circular, ask for explanations or request changes in the collateral (within 10 business days from submission, but this period may be extended to 15 business days).
4. Announcement of the bid: • After 17 business days from informing the PFSA of the intention to announce the takeover bid, the takeover bid circular has to be published by at least one information agency and on the broker's website. • From then on, the bidder can no longer withdraw the bid (except in certain limited circumstances, in the case of a counter-bid, for example).
5. Opinion of the target's management board: • The target's management board provides its opinion on the takeover bid. The opinion discusses the impact of the bid on the target's business, perspectives, employees and location of facilities. The opinion also includes the board's opinion on whether or not the proposed purchase price is fair. Third party fairness opinions are optional (but recommended given board duties, including acting in the best interests of the company and potential liability).

Step	
	• The opinion of the management board should be issued within 14 days of the announcement of a takeover bid and announced publicly, as well as submitted to the PFSA. • The opinion is not approved by the PFSA. It only serves as guidance to shareholders and does not have any direct impact on the procedure or purchase price in the takeover bid.
6.	Launch of the subscription period: • The subscription period starts not earlier that on the first and not later than on the fifth working day after the announcement of the takeover bid. • Duration: not less than 30 days and not more than 70 days. • In the case of a voluntary (prior) takeover bid, the subscription period may be extended up to 120 days, especially if all the required conditions precedent to the bid (e.g., merger approvals) have not been fulfilled or, if in the course of the takeover bid, a risk materializes affecting the realization of the goal of the offer. • A subscription period may be shortened if, before its expiry, all the remaining shares in the target have been subscribed for in response to the takeover bid. • The broker publishes on its website information about the prolonged subscription period (not later than seven days before the date of expiry of the original period) or a shortened subscription period (not later than seven days before the date of expiry of the shortened subscription period) and communicates it to the information agency.
7.	Purchase of shares tendered in the takeover bid within three business days from the end of the subscription period.
8.	Publication of results of the takeover bid within four business days from the end of the subscription period (where relevant: publication of information about fulfilment of conditions precedent to the takeover bid, at the deadline indicated in the takeover bid).
9.	Settlement of purchase of shares within three business days of the purchase: • Payment of purchase price to shareholders who accepted the bid. • Legal acquisition of purchased shares by the bidder.
10.	Squeeze-out if the bidder acquired at least 95% of the total number of votes in the target - request from the bidder addressed to the minority shareholders to sell their shares to the bidder submitted within three months following acquisition of 95% of the total number of votes in the target (see point 7.1 below).
11.	Sell-out if the bidder acquired at least 95% of the total number of votes in the target - request from minority shareholders to the bidder to buy their shares filed within three months following acquisition by the bidder of 95% of the total number of votes in the target (see point 7.2 below).

Set out below is an overview of the main steps for a public voluntary takeover offer in Poland.

Public voluntary takeover offer (indicative timeline)

Start process	
Day 0	• Filing with the PFSA of the intention to announce a takeover bid • Filing with the information agency for immediate publication • Filing with the target not required • Counter/higher bids can be filed at any time
Day 15	The PFSA can comment on the takeover circular, ask for explanations or request changes in the collateral. The takeover bid is suspended until the changes are introduced or the explanations are provided.
Day 18	Launch of bid. • Announcement of the takeover bid. • Bidder cannot withdraw bid (except in certain limited circumstances e.g. a counter-bid)
Min. day 19/ max. day 23	Start of the subscription period (not earlier than on the first and not later than on the fifth working day after the announcement of the takeover bid).
Day 32	Opinion of the target's management board on the takeover bid, which should be announced publicly and submitted to the PFSA.
Min. day 49/ max. day 145	Purchase of shares (within three business days from the end of subscription period)
Min. day 49/max. day 149	Publication of takeover bid offer results (within four business days from the end of subscription period)
Min. day 139/ max. day 226	Launch of squeeze-out or sell-out if bidder acquires at least 95% of voting shares in target

Duration of acceptance period: between 30 and 70 days.

Extendable up to 120 days (e.g. if conditions precedent have not been fulfilled or if a risk to the tender goal materializes during it)

Squeeze-out or sell-out can be launched within three months of acquiring more than 95% of the voting shares in the target

6. Takeover Tactics

6.1 Inside information

A company listed on a regulated market in Poland is required to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public. Disclosure of inside information is regulated by the Market Abuse Regulation.

- "Inside information" under the Market Abuse Regulation means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information that a reasonable investor would be likely to use as part of the basis of their investment decision.

It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise, and a large grey area will exist as to whether certain events will need to be disclosed or not. The PFSA actively monitors and, if necessary, sanctions breaches of disclosure obligations by Polish companies.

6.2 In the event of a public takeover bid

In the event of a (potential) mandatory takeover bid, the Polish takeover bid rules provide that no announcement can be made of a takeover bid without the prior notification of the PFSA. Following the notification, no approval of the authority is required and the bidder may proceed with completing the bid.

If a takeover bid is not announced (but required) or is carried out in breach of the applicable regulations, the bidder may not be able to exercise voting rights in the target and/or may be subject to a financial penalty of up to PLN 10,000,000 imposed by the PFSA.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Polish law is included in the Market Abuse Regulation, and a number of additional EU directives and regulations. As the framework is based on EU legislation, similar rules on insider dealing and market abuse exist in other EEA jurisdictions.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid, additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Common anti-takeover defense mechanisms

The table below provides an overview in summary form of the mechanisms that can be used by a target company to stage a defense against a takeover bid. These mechanisms take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. Special voting rights Holding shares giving special voting rights, e.g., two votes for each share.	• Requires explicit authorization in the articles of association by a majority of 75% of the votes cast at a general shareholders' meeting. • Usually, special voting rights are approved before the IPO while the company is still closely held. • The maximum voting power is two votes per one share (although under previous regulations, the limit was five votes per one share and, as existing rights are protected, such companies can still be found on the market). However, a company that is already listed may not issue shares with preferential voting rights.
2. Special rights to appoint board members Special rights of key shareholder(s) to appoint certain (or even the majority of) board members, regardless of the number of shares held.	• Requires explicit authorization in the articles of association by a majority of 75% of the votes cast at a general shareholders' meeting. • Usually special appointment rights are approved before the IPO while the company is still closely held. • Usually afforded to founders and/or heirs of founders. • Removal of special rights requires the consent of the holder. • May apply to appointment of supervisory board or management board members. • Management board members so appointed may always be removed by the general meeting by a majority of 50%.
3. Limitation of voting rights Clause in the articles of association providing for a maximum number of voting rights exercised by a single shareholder.	• A shareholder may only exercise its voting rights up to a specific level, e.g., 30% of the total voting rights. • The level cannot be lower than 10%. The most common level is 20%. • The limitation must apply to all shareholders equally.

Mechanism	Assessment and considerations
	• Depending on the articles, the number of voting rights held may be calculated at the level of a single shareholder level or that of a group of affiliated shareholders. • Requires explicit inclusion in the articles of association by a majority of 75% of the votes cast at a general shareholders' meeting.
4. Holding structures Holding key assets through subsidiaries jointly controlled by certain shareholders or third parties.	• Key assets, projects or revenue streams are held through subsidiaries with participation of certain shareholders or third parties. • Due to the special structure of shareholdings or special provisions in the subsidiary's articles of association, taking control of the parent company does not give automatic control over the subsidiary. • Usually do not require shareholders' approval if the holding structure is established at the time of acquisition of the key assets or at the commencement of a revenue generating project.
5. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a takeover bid.	• Sale of the entire business (or an organized part of it) or the sale of real property (unless waived in the articles of association) requires prior approval by the general shareholders' meeting by 75% or 50% majority of the votes cast respectively. • Generally, no approval of the general meeting is required if the crown jewels are held through subsidiary companies.
6. Capital increase (poison pill) Capital increase by the board (authorized capital) without preferential rights of the shareholders.	• Requires explicit authorization in the articles of association by a majority of 75% of the votes cast at a general shareholders' meeting at which at least one-third of the share capital is present or represented (no quorum is required at a second meeting that is convened if the one-third quorum was not reached at the first meeting). • The authorization is only valid for three years, but can be renewed. • The capital increase may not exceed 75% of the existing share capital or the amount remaining available under the authorized capital. • Shares may not be issued in exchange for in-kind contributions.

Mechanism	Assessment and considerations
	• The issue price is determined by the management board with approval by the supervisory board. • Instead of the outright issuance of shares, warrants with preferential subscription rights can be issued, in which case payment of the issue price can be deferred. • Very rarely used as a takeover defense in Poland.
7. Share buyback Share buyback "with a view to avoiding an imminent and serious harm" to the company.	• No authorization in the articles of association or from the general shareholders' meeting is required. • The total of directly and indirectly acquired shares may not exceed 20% of the share capital. • The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves. • Buybacks are to be made in compliance with corporate, transparency and market (abuse) rules. • The management board must provide the general shareholders' meeting with a report justifying the share buyback.
8. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, extremely high golden parachutes, salary increases, etc.	• No shareholders' approval is required unless the articles of association expressly require such approval for actions after the takeover bid has been notified. Such requirements are very rare. • May be questionable as actions against the best interests of the target and/or may lead to directors' liability.
9. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• No special restrictions as to purpose, time limit or scope of undertakings. • The shareholders could be considered as "acting in concert". If so, disclosure obligations apply and, if they hold together more than 50% of the voting rights, forming the group and any subsequent acquisition of shares will trigger an obligation to launch a takeover bid. • Assumes a stable shareholder base or reference shareholders.

Mechanism	Assessment and considerations
	• Quite popular and usually confidential, unless "acting in concert" rules apply.
10. Veto rights for certain shareholders Clauses providing for veto rights by key shareholders.	• Generally considered illegal as regards voting at the general shareholders' meeting (although still found, and in fact enforced, in a number of companies). • Possible at the level of voting in the supervisory board or management board. • Requires explicit authorization in the articles of association by a majority of 75%. • Usually, veto rights are approved before the IPO while the company is still closely held. • Defined by reference to an individually identified shareholder. Not transferable.
11. Limitations on share transfers Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders.	• In public companies, share transfer limitations are only possible if there are different classes of shares and certain classes are not listed. All listed shares must be freely transferable. • The articles of association may waive share transfer limitations on unlisted shares in the event of a takeover bid. • Contractual share transfer limitations, including limitations on listed shares, are possible and popular. • Share transfer limitations apply for a maximum of five years. Pre-emptive rights apply for a maximum of 10 years. • Shareholders could be considered as "acting in concert". If so, see "Shareholders' agreements" above.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If a shareholder in a public (listed) company (together with the persons with whom the shareholder acts in concert) holds 95% of the total number of votes in the company (as a result of a takeover bid or otherwise), they can force all other shareholders to transfer their shares to the majority shareholder at the price established in accordance with the rules applicable to establishing a minimum price in the takeover bid (see 4 above) and, if such majority shareholder reached the 95% threshold as a result of a takeover bid, the price should not be lower than the price offered in that takeover bid and general provisions (separate determination of the price based on rules applicable to takeover bids) do not apply. The squeeze-out may start within three months of reaching the 95% threshold which, in the case of a takeover bid, means three months from the closing of the takeover bid. The acquisition of shares as a result of a squeeze-out takes place without the consent of the shareholder to whom the squeeze-out is addressed.

7.2 Sell-out

If a shareholder in a public (listed) company (together with the persons with whom the shareholder acts in concert) holds 95% of the total number of votes in the company (as a result of a takeover bid or otherwise), each shareholder of that company has the right to demand that the majority shareholder buys out the shares held by the minority shareholder at the price established in accordance with the rules applicable to establishing a minimum price in the takeover bid (see 4 above) or, if such majority shareholder reaches the 95% threshold as a result of a takeover bid, the price should not be lower than the price offered in that takeover bid and general provisions (separate determination of the price based on rules applicable to takeover bids) do not apply. The sell-out request may be filed within three months after reaching the 95% threshold, which, in the case of a takeover bid, means three months from the closing of the takeover bid.

8. Delisting

Delisting of a Polish company must be approved by the PFSA and by the company's general shareholders' meeting by 90% of votes in the presence of shareholders holding shares representing at least 50% of the listed company's share capital. The shareholder who proposes the resolution to delist must first launch a public bid allowing all shareholders to sell the shares at the price established in accordance with the rules applicable to the minimum price in the takeover bid (see 4 above), unless all the remaining shareholders apply for delisting. If such conditions are not met, the PFSA will not permit the delisting of a Polish company, even if the company no longer has an appropriate free float. The target ceases to be a public company and becomes private on the date of its delisting from the WSE (on the date set forth in the PFSA delisting decision). The target's shares after delisting may still be registered in the register kept by the National Depository for Securities ("**NDS**") or, at the target's request, in another share register kept by another entity and therefore are deregistered from the NDS.

9. Private investment in public equity (PIPE)

Please refer to the Baker McKenzie Global PIPE Guide for details of the features of PIPE transactions and the requirements applicable to them.

10. Contacts within Baker McKenzie

Marcin Chyliński, Michał Głowacki and Katarzyna Grodziewicz in the Warsaw office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Poland.

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Saudi Arabia

1. Overview

The Saudi Exchange ("**Tadawul**") is currently the only stock exchange in Saudi Arabia. The Merger and Acquisition Regulations ("**MARs**") were introduced by the Capital Market Authority ("**CMA**") in 2007 as a framework to regulate the takeovers of publicly listed companies in Saudi Arabia.

In October 2017, the CMA introduced extensive amendments to the MARs which aimed to address some of the ambiguities and perceived deficiencies in the regulations and facilitate public takeovers in the jurisdiction. The revised regime is the product of a comprehensive review of established practices in several international jurisdictions and aligns the principles of the MARs more closely with international best practices.

Only a few public M&A takeovers have been executed under the amended MARs, one of which was the merger of the Saudi British Bank (SABB) and Alawwal bank in 2019, which created the third largest bank by assets in Saudi Arabia at the time.

2. General Legal Framework

2.1 Main legal framework

The legal framework for takeovers of public companies in Saudi Arabia is set out in the MARs. The MARs are one of several implementing regulations of the Capital Market Law ("**CML**"), which establish a broader framework designed to regulate and promote the development of Saudi Arabia's capital markets.

The MARs state that its provisions apply to any (i) purchase or sale of voting shares in a listed company resulting in ownership or control of 10% or more of the shares, and (ii) offer to purchase voting shares in such a company, if the shares sought to be acquired would increase ownership to 10% or more.

In addition to regulating public takeovers, the MARs also include provisions that apply to privately negotiated transactions between the bidder / offeror and selling shareholder(s) in a listed company which does not involve making a public offer to the shareholder(s) of the target. Such private transactions are not discussed further in this chapter.

2.2 Other rules and principles

In addition to the MARs, there are a number of additional rules and principles in Saudi Arabia that will need to be taken into account by prospective bidders planning a takeover, such as:

(a) The Companies' Law, issued by Royal Decree No. M/132 on 30 June 2022, which is the main legislation governing the operations of companies, regulating a wide array of matters including the establishment, liquidation, merger, conversion and division of companies, capital alterations as well as the conduct of board of directors' meetings and general assembly meetings and voting thresholds.

(b) The Market Conduct Regulations, issued by the CMA on 4 October 2004 (as amended), which address issues such as insider trading and market manipulation.

(c) The Rules on the Offer of Securities and Continuing Obligations ("**OSCOs**"), issued by the CMA on 27 December 2017 (as amended). The OSCOs impose disclosure obligations on listed companies and contain standards for prospectus disclosure, which the MARs require bidders to comply with where the offer consideration includes securities.

(d) The Listing Rules, issued by the CMA on 27 December 2017 (as amended), which govern, among other things, the listing of securities and the continuing obligations and delisting of listed companies.

(e) The Competition Law, issued by Royal Decree No. M/75 on 6 March 2019, which sets out Saudi Arabia's framework for competition law and merger control.

(f) The Rules for Foreign Investment in Securities ("**Foreign Investment Rules**"), issued by the CMA on 27 March 2023 (as amended), which regulate foreign investments in listed securities, debt instruments and investment funds.

2.3 The role of the CMA

The CMA was formed pursuant to the CML and is responsible for applying the CML and issuing rules, regulations and instructions related to the capital markets, including the MARs.

In its capacity as the principal securities regulator in Saudi Arabia, the CMA has traditionally exercised a broad discretion in the supervision and enforcement of the CML and its implementing regulations.

The CMA is given broad powers under the MARs to intervene as necessary to ensure that the provisions and principles in the MARs are complied with. The MARs also explicitly provide that the CMA may waive any requirement, in whole or in part, either upon request of the person to whom the relevant requirement applies or on its own initiative.

2.4 Foreign investments

The Foreign Investment Rules limit direct foreign investment in Saudi listed companies to (i) qualified foreign investors; and (ii) foreign strategic investors (the criteria of each being set out in the Foreign Investment Rules). In addition, the Foreign Investment Rules impose limits on shareholding levels, which would prevent qualified foreign investors from acquiring a majority stake. Notably, foreign strategic investors are exempt from these shareholding restrictions in a Saudi listed company. It is not currently clear whether this will open the door for foreign companies to execute a takeover of Saudi publicly listed companies, and this has yet to be tested.

2.5 General principles

The MARs set out a number of general principles that apply to public takeovers, including the following:

(a) Parties involved in takeovers must take care that information made available for the purpose of such transactions are not made in a way that may mislead shareholders or Tadawul.

(b) All shareholders of the target holding the same class of shares must be treated equally by the bidder.

(c) Any document or announcement relating to an offer or potential offer, addressed by the bidder, the board of the target or their respective advisors, to shareholders, must be true, fair and not misleading.

(d) During the course of an offer, or when an offer is being contemplated by the target, neither the bidder, nor the target, nor any of their respective advisors, may furnish information to some shareholders which is not readily made available to all shareholders. This principle does not restrict the furnishing of information in confidence by the target to a bona fide potential bidder or vice versa in the context of an offer.

(e) The bidder and the board of directors of the target must give sufficient information and advice to the shareholders of the target to enable them to reach a properly informed decision to accept or reject the offer.

(f) The board of the target company must always act in the best interests of its shareholders.

(g) The target's board may not commit any frustrating action(s) when a bona fide offer is imminent.

(h) A shareholder who owns shares in both the bidder and the target may only vote on decisions related to the offer at either the general assembly of the bidder or the target.

(i) Where there are "related parties" to a public takeover, there must be full disclosure of the interests of such parties in the transaction prior to the completion of that transaction.

(j) A director shall not vote at a board meeting, committee meeting or a general assembly meeting on any resolution concerning the offer or any relevant matter where the director has a conflict of interest.

(k) A false market must not be created where the value of the securities of the target, the bidder or of any other company concerned by the transaction fluctuate in such way that the rise or fall of the prices of the relevant securities becomes artificial and the normal functioning of the market is distorted.

(l) The activities of the target must not be affected for longer than is reasonable as a consequence of an offer.

3. Before a Public Takeover Offer

3.1 Consultation with the CMA

Given that there has been only limited practical experience of takeovers in Saudi Arabia, it would be prudent for any prospective bidder to consult with the CMA on all the steps before proceeding with such transactions.

Aside from this, we note that the MARs specifically require that the CMA be consulted on certain key aspects of the proposed offer, including where a party wishes to contact any shareholder with a view to seeking an irrevocable commitment to accept or refrain from accepting an offer or potential offer.

3.2 Pre-bid considerations under the MARs

With only limited practical experience of conducting takeovers in Saudi Arabia, it is difficult to meaningfully comment on what the pre-bid considerations for a bidder in Saudi Arabia might be and how the provisions of the MARs might impact on the bidder's preparations in practice.

That being said, it is perhaps useful to consider some of the key steps that bidders in other jurisdictions would be likely to undertake in advance of launching a formal offer (whether on a mandatory or voluntary basis) and consider how these are treated or addressed under the MARs:

(a) Maintaining secrecy during the pre-bid phase – The MARs impose obligations on persons involved in a takeover to "eliminate the chances of a leak of information". Accordingly, we would expect bidders in Saudi Arabia to monitor the target's share price and press speculation as evidence of any leak and have a "leaks" announcement pre-drafted and ready for release to correct any rumor or speculation (as the MARs require).

(b) Due diligence – Obligations around conducting due diligence are not directly addressed in the MARs. However, the bidder and the target are required to appoint independent financial and legal advisers who would likely perform a role in the due diligence.

(c) Confirming availability of financing on a "certain funds" basis – In cases where the offer is in cash or includes a cash element, the MARs require that the offer document must confirm that the bidder has obtained a bank guarantee from a local bank guaranteeing its ability to fully fund the cash component of the offer.

(d) Plan for dealing with any share options – The MARs require that offers are also to be made for options.

(e) Seeking support for the offer both from the target directors and from large shareholders. The CMA takes the view that the MARs do not allow a bidder to selectively share information with only some of the shareholders of the target that is not made available to remaining shareholders on the basis that this goes against the principle of "equality of information" between shareholders. Having said that, wall-crossing can take place provided certain requirements are met.

3.3 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Saudi Arabian listed company. The shareholding percentages listed below may vary depending based on the specifics of a company's bylaws, as in many instances, it is permissible for companies to adopt higher or lower voting thresholds than those stipulated in the relevant laws and regulations.

Shareholding	Rights
One share	• The right to obtain their portion of the net profits which are to be distributed in cash or through the issuance of shares. • The right to obtain their share of the company's assets upon liquidation. • The right to attend, participate and vote at general shareholders' meetings. • The right to dispose of their share(s). • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and auditors at general shareholders' meetings. • The right to request that decisions of general shareholders' meetings are annulled in cases where they do not comply with the Companies' Law or the by-laws of the company. • The right to file a derivative action against directors. • The right to preemptive rights to subscribe for new shares issued in exchange for cash.

Shareholding	Rights
	• The right to record their name in the company's shareholders' register. • The right to nominate and elect the board members.
5%	• The right to request that a competent judicial authority investigates the affairs of the company where the actions taken by directors or auditors, in relation to the affairs of the company, are considered suspicious. • The right to initiate a derivative action on behalf of the company. • In the context of a public merger or acquisition; where a bidder owns 5% or more in a target, the bidder has the right to request the board of the offeree to invite the general assembly to convene, to vote on an offer in which there is a related party.
10%	• The right to request the board of directors to invite the general assembly to convene (including to vote on the dismissal of some, or all, of the members of the board of directors). • The right to add one or more items to the general assembly's agenda upon its preparation.
More than 25%	The ability at an extraordinary general shareholders' meeting to block mergers, division of the company into two companies or more, takeovers undertaken through a share exchange / swap, capital increases, capital reductions, an extension of the term of the company or dissolution of the company.
More than 50% (of the votes represented in the relevant meeting)	The ability at an ordinary general shareholders' meeting to approve or block: • approval of the annual report of the board of directors; • appointment / dismissal of the company's auditor and the determination of the auditors' fees; • approval of the auditor report and financial statements; • approval of the sale of company assets, the value of which exceeds 50% of the value of its total assets; • creating and using reserves; • deciding on board proposals relating to the manner of distributing dividends; • approval of related party transactions.
66.6%	• The ability to approve all amendments to the bylaws, except amendments requiring the approval of shareholders representing 75% or 100% (see below).

Shareholding	Rights
	• Approving the company's purchase of treasury shares.
75% (of the votes represented in the relevant meeting)	The ability to approve: • increasing or reducing the company's capital; • extending the company's term; • dissolution of the company before the expiry of its term; • merging the company with another company; • dividing the company into two companies or more; and • a takeover undertaken through a share exchange / swap.
100%	The ability to approve amendments to the bylaws that increase the financial burdens of the company's shareholders.

3.4 Acting in concert

The MARs contain provisions requiring persons who "act in concert" to be treated as one person. Persons are treated as acting in concert if they actively co-operate, pursuant to an agreement or an understanding (even if it is non-binding or informal), to control a company through the acquisition by any of them of voting shares in that company. In certain cases, persons are presumed to be acting in concert with each other where they have a certain relationship(s) with one another, e.g., such as companies that are members of the same group.

3.5 Announcement of a public takeover obligation

The MARs clarify that an announcement of a firm intention to make an offer should only be made where the bidder has "every reason" to believe that it can and will continue to be able to implement its offer. Where an announcement of a firm intention is made, the bidder must, unless it is exempted by the CMA, proceed with the offer except where the offer is subject to a specific condition which has been made public and which has not been met.

The MARs stipulate a number of other circumstances where an announcement must be made by either the bidder or the target in the context of a potential offer, including:

- when a firm intention to make an offer is notified to the board of the target, irrespective of the target's attitude to the offer;
- upon an acquisition of shares by a person which gives rise to an obligation to make a mandatory offer (see 4.2);
- when a person (or persons acting in concert) become(s) the owner of 40% of the target's voting shares;
- when, before a bid approach has been made, the target is the subject of rumors and speculation or where there is an untoward price movement in the target's shares of 10% or more within a single day and there are reasonable grounds for concluding that this is a result of the potential bidder's actions;

- when, following a bid approach, the target is the subject of offer-related rumors and speculation, or where there is an untoward price movement in the target's shares of 20% or more from the lowest share price since the time of the approach or a price movement of 10% or more in a single day; and
- when negotiations or discussions are extended to include more than a very restricted number of people, i.e., outside those who need to know in the companies concerned and their immediate advisors, regarding (i) an acquisition of 30% or more of the voting shares of the target or (ii) the board of the target seeking one or more potential bidders.

3.6 Insider dealing

The general rules regarding insider dealing are set out in the Market Conduct Regulations. They will continue to apply both during and after the offer. The MARs also include provisions which prohibit improper disclosure of confidential information, including, in particular, price sensitive information.

3.7 Disclosure of certain dealings

The MARs require various specific disclosures concerning dealings during the offer period, including dealings by a bidder or a target for their own account.

3.8 Statutory Merger Creditor Objection Period

Pursuant to the Companies Law, once a merger has been agreed between the bidder and target, both parties are required to announce the merger at least 30 days prior to the date set for deciding and voting on the merger proposal. The target's announcement will trigger the start of the creditor objection period, whereby any creditor of the target may object to the merger within 15 days from the date of the announcement. In the event that a creditor objection is received, the target will be required to pay the relevant debt if it is payable prior to or during the creditor objection period, or provide sufficient guarantee or collateral to the creditor for the settlement of the relevant debt, if it is payable after the end of the creditor objection period. If the target fails to do so, the creditor can petition the competent judicial authority at least 10 days before the merger decision. The judicial authority can order the payment of the debt or provision of a guarantee and may suspend or postpone the merger if it finds that the merger could cause serious damage to the creditor.

3.9 Statutory Merger Effectiveness and Transfer of Rights and Liabilities

A statutory merger is deemed effective as of the date of registering the target's information in the bidder's register with the Commercial Register. Upon the effectiveness of the statutory merger, all rights, liabilities, assets and contracts of the target shall be deemed transferred to the bidder.

4. Effecting a Takeover

4.1 Types of public takeover bids

A takeover can be undertaken through two structures. The first is a voluntary takeover bid to the shareholders of the target, be it in the form of a cash offer, a share offer or a mix between the two. The second is a statutory merger, where the shareholders of the bidder and the target resolve, at their respective general assembly meetings, to merge one company into the other or both companies into a new entity.

In the case of both a share offer and a statutory merger, the offer is accepted by the shareholders of the target at a duly convened general assembly. The approval threshold at a general assembly is 75% of the shares represented at the meeting.

A cash offer (or an offer with a cash alternative) must also be made in circumstances where the bidder (or those acting in concert with it) purchases the target's shares for cash during the offer period or in the 12 months prior to it. The price offered must not be less than the highest price paid.

4.2 Mandatory offer

Where a person (or persons acting in concert) increase(s) its / their aggregate interest in the voting shares of a listed company to 50% or more through a restricted purchase of shares or a restricted offer for shares, the Board of the CMA will have the right to require such person(s) to purchase the remaining voting shares of the target.

It is worth noting that the MARs provide that a person (or persons acting in concert) who acquire(s) or control(s) 40% or more of a specific class of voting shares of a listed company, will be subject to a lock-up for a period of six months from the date on which this ownership level is reached.

4.3 Partial offer

A bidder may, subject to obtaining the CMA's approval, make a partial offer to the board of a target to acquire 30% or more of a specific class of the target's voting shares. The partial offer shall not be conditional except in respect of obtaining the relevant approvals related to the shares. If the bidder receives a level of acceptance that is higher than the level the bidder offered to acquire, the bidder may, subject to obtaining the CMA's approval, allocate the shares to the accepting shareholders pro rata to their shareholding in the target.

4.4 Conditionality and certain funds

An offer cannot be made subject to conditions relating to financing. Furthermore, an offer must not be subject to conditions which depend solely on subjective judgements by the bidder or the target, their respective directors, or that the fulfilment of such conditions is subject to their opinions.

As noted above, the MARs clarify that an announcement of a firm intention to make an offer should only be made where the bidder has "every reason" to believe that it can and will continue to be able to implement the offer. Responsibility for advising the bidder and ensuring all reasonable steps are taken in this respect rests on its financial advisor.

The MARs also state that in cases where the offer is in cash or includes a cash element, the offer document must confirm that the bidder has obtained a bank guarantee issued by a local bank to ensure that the bidder can fully fund the cash component of the offer.

5. Timeline

The MARs provide that a bidder must submit to the CMA, no later than three days from publishing the firm intention announcement, the timetable for the offer. The timeline below sets out the main milestones under the MARs and the Companies Law. Depending on the structure pursuant to which the takeover is undertaken, there could be other milestones and requirements which the parties to the transaction will have to adhere to:

Step	
1.	Submission of the final offer document to the CMA
2.	T - Obtaining the CMA's approval
3.	No later than T+1 - Announcement of the start of the target's creditor objection period*

Step	
4.	No later than T+3 - Obtaining the CMA's approval for the general assemblies of each the target and bidder to convene*
5.	No later than T+3 - Publication of the offer document approved by the CMA and providing the same to the board and shareholders of the target
6.	No later than T+4 - The general assemblies for each of the target and bidder are invited to convene*
7.	No later than T+16 - The end of the target's creditor objection period*
8.	No later than T+17 – Announcement of the status of any creditor objections received by the target*
9.	No later than T+17 - Publication of the target's board circular setting out its views on the bidder's plans in respect of the target and its employees (unless it is published as part of the offer document)
10.	No later than T+31 - Obtaining the approval of the bidder's shareholders (to the extent required)
11.	No later than T+31 - Obtaining the approval of the target's shareholders
12.	No earlier than T+31 - The earliest permitted closing date of the offer
13.	No later than 14 days from the earliest permitted closing date of the offer - The right of withdrawal of acceptances if the offer has not become unconditional as to acceptances
14.	No later than T+63 - The last date on which the target may announce profit or dividend forecasts, asset valuations or proposals for dividend payments
15.	No later than T+63 - The last date on which the bidder may revise its offer or publish new information
16.	No later than T+63 - The last date on which the offer can be declared unconditional as to acceptances
17.	No earlier than 21 days from the last date on which the offer can be declared unconditional as to acceptances - The last date on which the offer must remain open for acceptance after it is declared unconditional as to acceptances
18.	No later than 21 days from the last date on which the offer can be declared unconditional as to acceptances -The last date for satisfaction of all other conditions
19.	No later than 10 days from the last date for satisfaction of all conditions - The last date for cash or other consideration to be provided to the shareholders of the target

** In the case of a statutory merger*

Set out below is an overview of the main steps for a takeover in Saudi Arabia.

Takeover (indicative timeline)

Start process	
T Day	Obtain Capital Markets Authority's (CMA) approval
T + 1	Announcement of the start of the target's creditor objection period*
T + 3	Obtain the CMA's approval for the general assemblies of each of the target and bidder to convene* Publish CMA-approved offer document and provide to board and shareholders of the target
T + 4	General assemblies for each of the target and the bidder invited to convene*
T + 16	End of the target's creditor objection period*
T + 17	Target receives announcement of the status of any creditor objections. Target's board publishes circular setting out views on bidder's plans
T + 31	Obtain approval of bidder's and target's shareholders Earliest permitted closing date of offer
T + 45	Right of withdrawal of acceptances if offer has not become unconditional as to acceptances
T + 63	Last date for target to announce profit or dividend forecasts, asset valuations or proposals for dividend payments Last date for bidder to revise offer or publish new information Last date to declare offer unconditional as to acceptances
T + 84	All other conditions other than acceptances must be satisfied no later than 21 days from last date on which offer can be declared unconditional as to acceptances Offer must remain open for acceptance for at least 21 days after it is declared unconditional as to acceptances
T + 94	Last date for cash or other consideration to be provided to shareholders of the target

Within 3 days

No later than 14 days from earliest permitted closing

No later than 10 days from the last date for satisfaction of all conditions

* In the case of a statutory merger.

6. Takeover Tactics

With only a limited amount of takeover activity in Saudi Arabia and no established market practice, we believe that it would be premature to discuss takeover tactics. It will be interesting to observe how market practice develops in light of the latest amendments to the MARs.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

As noted above, in a share offer and a statutory merger, the shareholders of the target accept the offer at a duly convened general assembly. The required approval threshold at the general assembly is 75% of the shares represented at the meeting. Assuming this approval threshold is achieved, the dissenting shareholders will be bound by the majority vote and will be effectively "squeezed-out".

There is no squeeze-out mechanism in cash offers.

8. Delisting

The target must obtain the CMA's approval prior to delisting. It must also notify Tadawul of its intention to delist. The delisting application must provide the following:

- specific reasons for the proposed delisting;
- a copy of the form of required announcements;
- a copy of all documents addressed to the shareholders of the target; and
- the names and contact details of the financial advisor and legal advisor.

Once the CMA approves the request, the target is required to obtain the consent of its shareholders.

9. Contacts within Baker McKenzie

Karim Nassar and Mohammad Al Rasheed in the Riyadh office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Saudi Arabia.

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Singapore

1. Overview

Singapore's public takeover rules are modelled after those of the United Kingdom, Australia and Hong Kong, where the primary rules governing public takeover bids are found in a non-statutory code of conduct. The Singapore Code on Take-overs and Mergers ("**Code**") applies to takeovers and mergers of:

- corporations, business trusts and real estate investment trusts with a primary listing of their equity securities and units on the SGX-ST; and
- Singapore unlisted public companies and Singapore unlisted registered business trusts with more than 50 shareholders or unitholders, and with net tangible assets of S$5 million or more.

The Code applies whether the bidders are natural persons, corporations or unincorporated bodies, and whether they are resident in Singapore or not.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Singapore law relating to public takeover bids can be found in:

- the Code;
- the listing manual of the Singapore Exchange Securities Trading Limited ("**SGX-ST**") ("**Listing Manual**");
- the Companies Act 1967 of Singapore ("**Companies Ac**t"); and
- the Securities and Futures Act 2001 of Singapore ("**Securities and Futures Act**").

2.2 Other rules and principles

Aside from the main legal framework for public takeover bids in Singapore, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on the Companies Act and the Securities and Futures Act. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are found in the Securities and Futures Act. For further information, see 3.3 below.

(c) The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are found in the Listing Manual.

(d) The general rules on the supervision and control over the financial markets.

(e) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.3 Supervision and enforcement by the Securities Industry Council

Public takeover bids are subject to the supervision and control of the Securities Industry Council ("**SIC**"). The SIC administers and enforces the Code. The Code is issued by the Monetary Authority of Singapore ("**MAS**"), the paramount securities regulator in Singapore.

The SIC has a number of legal tools that it can use to supervise and enforce compliance with the Code, including private reprimands, public censures, depriving the offender of its ability to enjoy the facilities of the securities market and administrative fines. In addition, the SIC has the power to investigate any dealing in securities connected with a public takeover. If the SIC finds evidence to show that a criminal offence has taken place, whether under the Companies Act, the Securities and Futures Act or otherwise, it will refer the matter to the appropriate authorities.

The SIC also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 Foreign investments

There are sector-specific regimes containing ownership and control provisions that cover investments including foreign investments. Additionally, under Section 125(1)(n) of the Insolvency, Restructuring and Dissolution Act 2018, the court may order the winding up of a company if it is used against Singapore's national security or interest.

The Significant Investments Review Act which came into force on 28 March 2024, is administered by the Office of Significant Investment Review, which is situated within the Ministry of Trade and Industry (MTI).

Additionally, the following sector-specific regimes contain ownership and control provisions:

Legislation	Brief description
Banking and finance	
Banking Act 1970 administered by the Monetary Authority of Singapore (MAS) Relevant provisions: Section 15A and Section 15B	The act provides for the licensing and regulation of the businesses of banks, merchant banks and related institutions, and the credit card and charge card business of banks, merchant banks and other institutions. Approval or notification will be required for substantial shareholders and controllers of banks incorporated in Singapore, merchant banks in Singapore and licensees of credit card and charge business. Approval will also be required for shareholders of merchant banks in Singapore.
Credit Bureau Act 2016 administered by the MAS Relevant provisions: Section 40	The act provides for the regulation of certain credit bureaus, the credit reporting business and certain members of these credit bureaus to whom the credit bureaus provide customer information, and for matters connected with any of these. Approval will be required for substantial shareholders and controllers of licensed credit bureaus. Approval will also be required for any agreement or arrangement to act together with any person with respect to their interests in voting shares in a licensed credit bureau.

Legislation	Brief description
Financial Advisers Act 2001 administered by the MAS Relevant provision: Section 65	The act regulates financial advisers and their representatives and supervisors. Approval will be required for controllers of licensed financial advisers.
Finance Companies Act 1967 administered by the MAS Relevant provision: Section 12	The act licenses and controls finance companies. Approval will be required for substantial shareholders and controllers of finance companies incorporated in Singapore.
Financial Holding Companies Act 2013 administered by the MAS Relevant provisions: Section 13, Section 14, Section 20 and Section 21	The act regulates financial holding companies. Approval will be required for substantial shareholders and controllers of designated financial companies that are regulated under the act.
Financial Services and Markets Act 2022 administered by the MAS Relevant provision: Section 149	The act provides for a financial sector-wide regulation of financial services and markets, the exercise of control over and the resolution of financial institutions and their related entities, and the licensing and regulation of digital token service providers. Approval will be required prior to becoming a 20% controller of a licensed digital token service provider.
Insurance Act 1966 administered by the MAS Relevant provisions: Section 26 and Section 27	The act regulates insurance businesses in Singapore, insurers, insurance intermediaries and related institutions. Approval will be required for substantial shareholders and controllers of licensed insurers incorporated in Singapore and for controllers of registered insurance brokers. Approval will also be required for any agreement or arrangement to act together with any person with respect to their interests in voting shares in a licensed insurer incorporated in Singapore.
Payment Services Act 2019 administered by the MAS Relevant provisions: Section 28 and Section 59	The act provides for the licensing and regulation of payment service providers and the oversight of payment systems. Approval will be required for controllers of licensees and operators of designated payment systems. Approval will also be required for any agreement or arrangement to act together with any person regarding their interests in voting shares in an operator of a designated payment system.
Securities and Futures Act 2001 administered by the MAS Relevant provisions: Section 27, Section 46U, Section 70 and Section 81ZE	The act regulates activities and institutions in the securities and derivatives industry, financial benchmarks and clearing facilities. Approval will be required for substantial shareholders and controllers of certain financial institutions that are approved, recognized or licensed under the act.

Legislation	Brief description
Trust Companies Act 2005 administered by the MAS Relevant provision: Section 16	The act provides for the licensing and regulation of trust companies. Approval will be required for controllers of a licensed trust company incorporated in Singapore and notification will be required for controllers of a licensed trust company incorporated outside Singapore.
Healthcare	
Healthcare Services Act 2020 administered by the Ministry of Health (MOH)	The act was enacted to replace the Private Hospital and Medical Clinics Act in a move toward a services-based and premises-neutral approach to the regulation of Singapore's healthcare system. The main objectives are to better safeguard patient safety and welfare, and provide greater regulatory clarity for licensees, while enabling the development of new and innovative healthcare services in the changing healthcare environment. Key ownership and control provisions include controls for both the licensee and key office holders, as follows: 1. Licensees must apply for a license to provide a licensable healthcare service, including the modes of service deliveries intended or any specified services, and pay for the licensing fee. A set of license conditions may be separately imposed, in addition to the general, advertising and service-specific regulations they have to comply with. Any modifications of the license or cessation of the services must be notified to the MOH within the prescribed time. The MOH may take regulatory actions against the licensees for contravening any requirements imposed under the act. 2. Licensee must notify the MOH on the appointment or subsequent changes to the roles of key office holders, including key appointment holders, principal officers and clinical governance officers (where appropriate). Such appointed personnel may be removed if they have been deemed unsuitable to act in that capacity in relation to the licensee or have not complied with any requirements imposed under the act.
Information, communications and media	
Info-communications Media Development Authority Act	The act gives the IMDA the powers to issue directions and codes of practices on competition and consumer

Legislation	Brief description
administered by the Ministry of Communication and Information (MCI) and the Infocomm Media Development Authority (IMDA) Relevant provision: Section 65	protection matters in the media industry. The act requires "regulated persons"* to obtain the IMDA's approval to merge, consolidate with or be taken over by another regulated person or any other person carrying on any business connected to the provision of media services in Singapore. * This refers to newspaper companies or the proprietor of a newspaper, as defined in the Newspaper and Printing Presses Act, or broadcasting licensee, as defined in the Broadcasting Act.
Newspaper and Printing Presses Act 1974 administered by the MCI Relevant provisions: Section 11 and Section 12	The act regulates printing presses and newspaper companies in Singapore, and newspapers that are printed, published, sold or distributed in Singapore. Those who publish a newspaper once a week or more frequently are required to form a newspaper company, and such entities are subject to controls (including rules on shareholding limits). All directors in the newspaper company must be Singaporean citizens and 1% or more of the issued and paid-up capital by the company must be management shares (MS). MS are only issued/transferred to Singaporean citizens or corporations subject to the minister's approval, and accord greater voting rights to MS holders only in resolutions relating to the appointment or dismissal of a director or any member of staff of a newspaper company. The minister's approval must be given for any person to become a substantial shareholder, 12% controller or an indirect controller of a newspaper company. The minister may also direct or restrict the transfer or disposal of the shares held by the person in question if there is noncompliance with the relevant requirements and approvals pertaining to the control of the newspaper company.
Telecommunications Act 1999 administered by the MCI and the IMDA Relevant provision: Section 38	The act is the legislative framework that governs the regulation of Singapore's telecommunications sector. The act provides the IMDA the powers to grant licenses and issue directions, codes of practices and standards of performances to regulate telecommunications systems and services, and the conduct of telecommunications licensees, among others. Designated telecommunication licensees (DTLs) are required to notify the IMDA of specified changes in ownership and control of DTLs. Further, the IMDA's approval must be given for any person to acquire specified levels of ownership or control in DTLs. DTLs are

Legislation	Brief description
	also required to seek the IMDA's approval for the appointment of key appointment holders, including the DTL's directors and chief executive officer. The IMDA may direct the DTL to remove such key appointment holders if they are appointed without the IMDA's approval or if conditions of approval are breached.
Broadcasting Act 1994 administered by the MCI and the IMDA Relevant provisions: Section 35 and Section 36	The act regulates dealing in, operation of and ownership in broadcasting services and broadcasting apparatus. It also regulates online communication services accessible by Singapore end users. Specified changes in ownership and control of broadcasting companies that hold a relevant license are subject to the minister's approval, such as when individuals seek to be a substantial shareholder, 12% controller or an indirect controller of a broadcasting company that holds a relevant license. Broadcasting companies that hold a relevant license are required to seek prior approval from the IMDA for the appointment of key appointment holders.
Postal Services Act 1999 administered by the IMDA Relevant provision: Section 26B	The act governs the regulation of Singapore's postal sector and the nationwide public parcel locker network. Under the act, the IMDA has the powers to do the following, among others: 1. Grant or modify licenses and issue directions, codes of practice and standards of performance to regulate postal services and systems and the conduct of postal licensees 2. Appoint an operator and issue directions and codes of practice for, or in connection with, the installation, operation and maintenance of the public parcel locker network Designated postal licensees (DPLs) are required to notify the IMDA of specified changes in ownership or control of DPLs. Further, the IMDA's approval must be given for any person to acquire specified levels of ownership or control in DPLs. DPLs are also required to seek the IMDA's approval for the appointment of key appointment holders, including the DPL's directors and chief executive officer. The IMDA may direct the DPL to remove such key appointment holders if they are appointed without the IMDA's approval.
Public utilities	

Legislation	Brief description
Public Utilities Act 2001 administered by the Public Utilities Board (PUB) Relevant provision: Section 44F	The PUB, as the national water agency, manages Singapore's water supply, water catchment and used water in an integrated way. Part 4A of the act imposes legislative controls on designated parties (entities, business trusts or trusts) that are critical to water security. Notification or approval obligations for specified changes in ownership and control of designated parties (entities, business trusts or trusts) and the acquisition as a going concern of (parts of) the designated party's business or undertaking, will be imposed on buyers of the designated parties.
Electricity Act 2001 administered by the MTI and the Energy Market Authority (EMA) Relevant provision: Section 30B	The act creates a market framework for the electricity industry. It makes provision for the safety, technical and economic regulation of (i) the generation, transmission, supply and use of electricity and (ii) the other matters connected therewith. Notification or approval obligations for specified changes in ownership and control of designated licensees and the acquisition as a going concern of (parts of) the designated licensee's business or undertaking, will be imposed on buyers and the designated licensees. Designated licensees will also be required to seek approval for the appointment of key officers.
Gas Act 2001 administered by the MTI and the EMA Relevant provision: Section 63B	The act creates a market framework for the gas industry. It makes provision for the safety, technical and economic regulation of (i) the transportation and sale of gas and (ii) the other matters connected therewith. Notification or approval obligations for specified changes in ownership and control of designated licensees and the acquisition as a going concern of (parts of) the designated licensee's business or undertaking, will be imposed on buyers and the designated licensees. Designated licensees will also be required to seek approval for the appointment of key officers.
Security and emergency services	
Police Force Act 2004 administered by the Ministry of Home Affairs Relevant provision: Section 88	The act governs the organization, discipline and related matters of the Singapore Police Force and Auxiliary Police Forces (APFs). The act also regulates the employers of APFs. Prior approval or notification for specified changes in ownership and control, and acquisition as a going concern of the business or undertaking of an employer of an APF are imposed on buyers, sellers and the employer.

Legislation	Brief description
	The employer of an APF is also required to seek prior approval for the appointment of any person as its chief executive officer, chair and directors. Such persons may be removed if they have been appointed without approval or if conditions of approvals are breached.
Transport	
Maritime Port Authority of Singapore Act 1996 administered by the Maritime Port Authority (MPA) Relevant provision: Section 86F	The act provides for the functions, duties and powers of the MPA, including the licensing and regulation of marine and port facilities and services. There are notification or approval obligations for specified changes in ownership and control of designated entities. There may be other ownership and control provisions in the license conditions for MPA licensees.
Civil Aviation Authority of Singapore Act 2009 administered by the Civil Aviation Authority of Singapore (CAAS) Relevant provision: Section 57	The act provides for the functions, duties and powers of the CAAS, including the licensing of airport operators and the regulation of airport development and operations. There are approval obligations for specified changes in ownership and control of the airport licensee and for the acquisition as a going concern of the business of an airport licensee (or any part thereof) conducted pursuant to its license for an airport. The airport licensee must also not appoint key officers without the prior approval of the CAAS. Such officers may be removed if they have been appointed without approval.
Rapid Transit System Act 1995 administered by the Land Transport Authority (LTA) Relevant provision: Section 18A	The act provides for the planning, construction, operation and maintenance of rapid transit systems. A rail licensee must not appoint, reappoint or remove key officers without the approval of the LTA. Such officers may be removed or reinstated if they have been appointed or removed (as the case may be) without approval. There may be other ownership and control provisions in the license conditions for LTA licensees.
Bus Services Industry Act 2017 administered by the LTA Relevant provision: Section 19 Note: The Ministry of Transport has also introduced the Transport Sector (Critical Firms) Bill on 3 April 2024 which will amend the Bus Services Industry Act 2017 to introduce	The act provides for the regulation and provision of public bus services and the operation of bus interchanges and bus depots. A bus licensee must not appoint, reappoint or remove key officers without the approval of the LTA. Such officers may be removed or reinstated if they have been appointed or removed (as the case may be) without approval. There may be other ownership and control provisions in the license conditions for LTA licensees.

Legislation	Brief description
provisions in relation to the control of designated entities.	
Transport Sector (Critical Firms) Act 2024	There are notification and approval obligations for change in shareholding/management and other supervisory controls for designated transport entities under the: • Bus Services Industry Act 2015 • Civil Aviation Authority of Singapore Act 2009 • Maritime and Port Authority of Singapore Act 1996 • Rapid Transit Systems Act 1995

2.5 General principles

The following general principles apply to public takeovers in Singapore. These are based on the Code:

(a) persons engaged in public takeovers must observe both the spirit and the precise wording of the general principles and rules. Moreover, the general principles and the spirit of the Code will apply in areas not explicitly covered by any rule;

(b) while the boards of a bidder and a target company and their respective advisers and associates have a primary duty to act in the best interests of their respective shareholders, the general principles and rules will inevitably impinge on the freedom of action of boards and persons involved in public takeovers. They must therefore accept that there are limitations on the manner in which those interests can be pursued in public takeovers;

(c) a bidder must treat all shareholders of the same class in a target company equally;

(d) rights of control must be exercised in good faith and oppression of the minority is wholly unacceptable;

(e) where effective control of a company is acquired or consolidated by a person, or persons acting in concert, a general offer to all other shareholders is normally required;

(f) a bidder should announce an offer only after the most careful consideration. Before taking any action which may lead to an obligation to make a general offer, a person and their financial advisers should be satisfied that he can and will continue to be able to implement the offer in full;

(g) if the board of a target company has received a *bona fide* offer or has reason to believe that a *bona fide* offer is imminent, it must not, without the approval of its shareholders in general meeting, take any action on the affairs of the target company that could effectively result in any *bona fide* offer being frustrated or the shareholders being denied an opportunity to decide on its merits;

(h) a target company board which receives an offer or is approached with a view to an offer being made, should, in the interests of its shareholders, seek competent independent advice;

(i) in the course of a public takeover, or when such transaction is in contemplation, the bidder, the target company and their respective advisers must not give information to some shareholders that is not made available to all shareholders. This principle does not apply to the provision of information in confidence by the target company to a *bona fide* potential bidder or vice versa

(j) shareholders should be given sufficient information, advice and time to enable them to reach an informed decision on an offer. No relevant information should be withheld from them;

(k) any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of a bidder or target company or its advisers, should, as with a prospectus, meet the highest standards of care and accuracy. Profit forecasts require special care;

(l) all parties to a public takeover should make full and prompt disclosure of all relevant information and use every endeavor to prevent the creation of a false market in the shares of a bidder or target company. Parties to such transactions must take care not to make statements which may mislead shareholders or the market; and

(m) directors of a bidder or a target company should, in advising their shareholders, have regard to the interests of shareholders as a whole, and not to their own interests or those derived from personal or family relationships. Shareholders of companies which are effectively controlled by their directors must accept that the attitude of their board on any offer will be decisive. There may be good reasons for the board rejecting an offer or preferring the lower of two offers. The board must carefully examine its reasons for doing so and be prepared to explain its decision to shareholders.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Singapore listed company:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process or other reasons (as provided for in section 216 of the Companies Act).

Shareholding	Rights
	- The right to request to bring an action on behalf of the company or intervene in an action to which the company is a party (as provided for in section 216A of the Companies Act). - The right to receive dividends.
5%	- The right to put additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda. - The right to call for a poll vote on a resolution. - The right to require directors' salaries and other benefits to be disclosed.
10%	- The right to request the board of directors to convene a general shareholders' meeting.
More than 25% of the total number of shares held by independent shareholders (i.e., shareholders other than the bidder and its concert parties) (at a general shareholders' meeting)	- The ability to block a delisting proposal at a general shareholders' meeting.
More than 25% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block: - any changes to the constitution, capital reductions, share buy-backs and dissolution of the company; - the modification or disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or warrants; - the giving of financial assistance by a public company to purchase its shares or shares of its holding company; and - certain methods of takeovers, i.e., amalgamations and schemes of arrangements.
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting: - to approve capital increases; - to approve a disposal of the whole or substantially the whole of the company's property; - to appoint and dismiss directors and to approve the remuneration and, as relevant, severance package of directors;

Shareholding	Rights
	- to approve certain aspects of the remuneration and severance package of executive management; - to appoint and dismiss statutory auditors and to approve their remuneration; - to approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors); - to approve dividend payments; and - to take decisions for which no special majority is required.
90%	The right to force all other shareholders to sell their shares (a "**squeeze-out**") following a takeover bid if (i) the takeover bid is made by way of a general offer or other scheme or contract, and (ii) the bidder, its related corporations, their respective nominees and certain associated persons (see 7.1 for further information) do not own any shares in the target company as of the date of the offer or proposal.

3.2 Restrictions and careful planning

Singapore law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. The relevant provisions in the Securities and Futures Act prohibit an individual in possession of non-public material price-sensitive information from (a) communicating the information to a third party who is likely to deal in the securities or (b) dealing in the securities.

The rules include, amongst other things, that manipulation of the target company's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company (other than in relation to the actual takeover bid) from launching a takeover bid.

For further information on the rules on insider dealing and market abuse, see 6.1 below.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable threshold. The relevant disclosure threshold in Singapore is 5%.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include its affiliates, financial or professional advisers and directors. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements such as call option agreements or voting undertakings.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a (potential) public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if a reasonable person would not expect the information to be disclosed and (a) the information concerns an incomplete proposal or negotiation or (b) the information comprises matters of supposition or is insufficiently definite to warrant disclosure. However, a delay of the announcement is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential. Where the target company is the subject of rumors or speculation about a possible bid, or where there is significant movement in its share price or share turnover, the target company must immediately make an announcement.

3.6 Announcements of a public takeover bid

Prior to the public announcement of a (potential) takeover bid by the bidder or the target company, no one is permitted to announce the launching of a public takeover bid.

Following an approach to the target company's board, the target company must make an announcement once it receives notification of a firm intention to make an offer. As soon as the public takeover bid is announced, it can normally no longer be withdrawn (except in certain circumstances).

If there are rumors or leaks that a (potential) bidder intends to launch a public takeover bid, or there are undue movements in the target company's share price or trading volume, and there are reasonable grounds for concluding that it is the potential bidder's actions (whether through purchase of the target company's shares or otherwise) which have directly contributed to the situation, the bidder or the target company (depending on whether or not an approach has been made to the target company) must make a holding announcement to clarify the situation. See 3.7 for further details.

3.7 Early disclosures – Put-up or shut-up

(a) Early disclosure – Where there is a leak regarding information relating to a potential bid, or where there are undue movements in the target company's share price or trading volume, a holding announcement is required to be made, regardless of whether or not there is a firm intention to make an offer. In addition, the target company could request that the SIC imposes a deadline by which the potential bidder must clarify its intention as to whether or not it is making an offer. This type of disclosure may be considered when the bid is hostile or where there is prolonged uncertainty as to whether or not a bid is forthcoming, but an announcement is nevertheless appropriate.

(b) Put-up or shut-up – Under the Code, there are no formal sanction mechanisms for the SIC to force a bidder to make an announcement to clarify whether or not it intends to carry out a public takeover bid. However, in the case of a competitive bid situation, a potential competing bidder must clarify its intention by the 53rd day from the date the first bidder dispatches its offer document (in the case of a general offer), or no later than the seventh day prior to the date of the general shareholders' meeting to approve the scheme of arrangement or amalgamation.

3.8 Due diligence

The Listing Manual generally prohibits selective disclosure in order to prevent insider dealing and market abuse, but allows selective disclosure to be made on an exceptional basis for limited purposes, such as for purposes of facilitating the target company's business or corporate objectives. Appropriate confidentiality restraints (such as the use of confidentiality undertakings and stand-still agreements) must be put in place and disclosure should only be made on a need-to-know basis.

A concern for the parties involved during the due diligence process prior to commencement of the offer is the risk of inside information being disclosed in the process, which would result in the target and the bidder running afoul of the insider dealing and market abuse rules. As a result, care needs to be taken to ensure that the information provided by a target company to a bidder during due diligence does not include materially price-sensitive information. When an offer or a potential offer has been announced, the Code requires the target company to provide, at a competing bidder's request, the information provided to the other competing bidder(s).

In the absence of the target company providing confidential information to the potential bidder, the bidder will only have access to publicly-available information of the target company. In the case of a Singapore listed target company, this would include the following information available from the Accounting and Corporate Regulatory Authority and/or the target company's corporate announcements page on the SGX-ST:

- its constitution;
- annual audited financial statements;
- half-yearly or quarterly financial results;
- shareholder circulars and prospectuses;
- public announcements pursuant to its disclosure obligations under the Listing Manual, for the last 5 years;
- substantial shareholding notifications; and
- annual reports.

3.9 Acting in concert

For the purpose of the Singapore takeover rules, persons are "acting in concert" if they collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring or consolidating effective control over the target company.

Persons that are affiliates of each other are presumed to be acting in concert unless the contrary is established.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether persons act or do not act in concert. This is especially relevant in relation to mandatory general offers. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 30% threshold, the members of the group will have a joint obligation to carry out a mandatory general offer, even though the individual group members do not pass the 30% threshold.

If persons acting in concert with the bidder possess confidential price-sensitive information, they are prohibited from dealing in the target company's securities during the time when there is reason to suppose that an approach, an offer or a revised offer is contemplated and the announcement of such approach, offer or revised offer. Such restriction does not apply where such dealings are excluded from the proposed offer or where there are no-profit arrangements in place.

If the bidder, the target or any of the persons acting in concert with them deal in the securities of the target company or securities of the bidder (in the case of a securities exchange offer), they are required to publicly disclose such dealings before the commencement of the offer period, if a potential offer has been the subject of an announcement that talks are taking place (whether or not the potential bidder has been named) or if a potential bidder has announced that it is considering making an offer.

Purchases of securities in the target company by persons acting in concert with the bidder within the period between three to six months prior to the commencement of a general offer may affect the price payable by the bidder to the target shareholders. Please see 4 below for more details.

4. Effecting a Takeover

A public takeover bid in Singapore can take one of the following forms:

- a voluntary general offer in which a bidder voluntarily makes an offer for all the voting securities issued by the target company (and securities issued by the target company conferring the right to acquire voting securities of the target company);
- a mandatory general offer, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of at least 30% of the voting securities of the target company, or where it already holds 30%-50% of the voting securities of the target company (alone or in concert with others), acquires 1% of the voting securities of the target company within a rolling six-month period;
- a scheme of arrangement under section 210 of the Companies Act, in which the bidder enters into an implementation agreement with the target company to acquire all the voting securities issued by the target company, either by cancelling the existing securities of the target company with new securities issued to the bidder, or transferring the securities of the target company to the bidder;
- an amalgamation under sections 215A to 215J of the Companies Act, in which the bidder enters into an amalgamation proposal with the target company, and the target company is merged with the bidder, with the bidder (or a special purpose vehicle) as the surviving entity; and
- a voluntary delisting whereby an exit offer is made by the target company or majority holders to buy out the minority holders in the target company.

4.1 Voluntary general offer

- A voluntary general offer must be conditional upon the bidder acquiring at least 50% of the target company's voting securities.
- The bidder is free to make the voluntary general offer subject to a higher minimum acceptance threshold, and other sufficiently objective conditions, subject to prior approval by the SIC. Prior approval by the SIC is not required in the case of customary conditions such as merger control clearance, approval of security holders for new issuances of securities and approval from the SGX-ST for listing.

- The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target), subject to the following:
    - The offered price may be paid in cash, securities or a combination of both, unless the bidder or a person acting in concert with it had acquired more than 10% of the voting rights in the target company for cash within the six-month period prior to making its offer, in which case the offer must be made for cash or a cash alternative.
    - The offered price must not be less than the highest price paid by the bidder or persons acting in concert with it during the offer period (starting on the date of the takeover announcement) or within the three months prior to the commencement of the offer period.
    - If, during the offer period, the bidder or persons acting in concert with the bidder acquire or commit to acquire securities to which the offer relates at a higher price, then the offered price must be raised to that higher price.
    - If the target company has different categories of securities, comparable offers must be made for each class of securities, subject to prior consultation with the SIC.

4.2 Mandatory general offer

- A mandatory general offer is triggered as soon as:
    - a person or group of persons acting in concert (or persons acting for their account), as a result of an acquisition of voting securities of the target company, directly or indirectly holds more than 30% of the voting securities of the target company; or
    - where a person or group of persons acting in concert (or persons acting for their account) already hold, directly or indirectly, between 30% to 50% of the voting securities of the target company and acquires 1% of the voting securities of the target company within a rolling six-month period.
- The mandatory general offer must be made conditional upon the bidder acquiring at least 50% of the target company's voting securities. Save for merger control clearance (if required), no other conditions are allowed and a mandatory general offer cannot be subject to a higher minimum acceptance threshold.
- The main exceptions to the mandatory general offer obligation include situations where:
    - the stake of more than 30% is acquired as a result of acceptances under a voluntary general offer;
    - the stake is acquired from another member of the concert party group, provided that the leader of the concert party group or the largest individual shareholding does not change, and the price paid for the shares is not at a significant premium;
    - the stake in the target company is acquired indirectly through obtaining control over an intermediate holding company that holds more than 30% in the target company, i.e., an indirect acquisition, and the target company does

not contribute significantly to the assets, market capitalization, sales or earnings of the intermediate holding company;

  - the stake is acquired pursuant to a subscription of new shares, i.e., a rights offering or issue of new securities as consideration for an acquisition, and the waiver of the requirement to make a mandatory general offer is obtained through an independent vote of the holders of securities in the target company in compliance with the whitewash procedure under the Code;
  - the stake is acquired within the framework of a corporate restructuring, i.e., a pro rata distribution of voting securities in a downstream company to the upstream company's shareholders, and approval is obtained from the independent holders of securities in the target company in compliance with the whitewash procedure under the Code; and
  - in the case of companies with a dual class share structure with a separate class of shares that carry multiple votes, there occurs a voluntary conversion or automatic conversion of multiple voting shares into ordinary shares which carry one vote each or a reduction in the number of votes attached to each multiple voting share, which results in an increase in the percentage of voting rights of a shareholder and persons acting in concert with them, and such shareholder is independent of the conversion or reduction. Where such shareholder is not independent, the waiver of the requirement to make a mandatory general offer may be obtained through an independent vote of the holders of securities in the target company in compliance with the whitewash procedure under the Code. A mandatory general offer is also not required if the shareholder and/or their concert parties dispose within six months (or such longer period of time as the SIC may allow in exceptional circumstances) of the date of the conversion or reduction such number of shares as is necessary to reduce their aggregate voting rights in the target company to a level which is below the mandatory general offer thresholds.

The SIC should nonetheless be consulted in all the above cases.

- The offer consideration payable by the bidder in a mandatory general offer must meet the following criteria:
  - The offered price must be paid in cash or accompanied by a cash alternative.
  - The offered price must not be less than the highest price paid by the bidder or persons acting in concert with it during the offer period (starting on the date of the takeover announcement) or within the six months prior to the commencement of the offer period.
  - If, during the offer period, the bidder or persons acting in concert with the bidder acquire or commit to acquire securities to which the offer relates at a higher price, then the offered price must be raised to that higher price.
  - If the target company has different classes of securities, comparable offers must be made for each class of securities, subject to prior consultation with the SIC.
  - in the case of companies with a dual class share structure, the offer price will be the highest price that the bidder and/or its concert parties have paid for voting rights in the target company in the six months prior to the earlier of the date of the announcement of the conversion or reduction, or the date of the

conversion or the reduction. If the bidder and its concert parties did not acquire shares in the target company in the six months prior to such date, the SIC will generally require the offer price to be the simple average of the daily volume weighted average traded prices of the target company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the earlier of the date of the announcement of the conversion or the reduction, or the date of the conversion or the reduction. The SIC, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

4.3 Scheme of arrangement

- Although the provisions of the Code apply to schemes of arrangement, it is usual for the bidder to obtain from the SIC exemptions from compliance with certain provisions of the Code, e.g., provisions relating to the takeover timetable and type of consideration required, etc.
- Under section 210 of the Companies Act, a scheme of arrangement must be conditional upon the approval from a majority in number of holders representing at least 75% of the voting securities of the target company or the class of voting securities present and voting.
- The following stages are involved in effecting a public takeover by way of a scheme of arrangement:
    - the target company applies to the court to convene the requisite meetings of the classes of holders;
    - the relevant classes of holders hold meetings to approve the scheme of arrangement; and
    - the target company applies for the court's sanction if the holders of all the classes approve the scheme of arrangement by the requisite majorities.
- Once the scheme of arrangement is approved and sanctioned by the court, all the holders of securities of the target company are bound by the scheme, including those who voted against it.

4.4 Amalgamation

- Although the provisions of the Code apply to amalgamations, the bidder may obtain from the SIC exemptions from compliance with certain provisions of the Code, e.g., provisions relating to the offer timetable.
- An amalgamation under sections 215A to 215J of the Companies Act must be conditional upon the approval of the holders of securities of each of the bidder and the target company representing at least 75% of the voting securities of each company present and voting.
- The boards of the bidder and the target company are also required to make solvency statements, in relation to their own companies and also in relation to the amalgamated company.
- If a bidder wishes to achieve full control over the target company, the bidder should designate the bidder or a special purpose vehicle as the surviving entity. If the consideration is in the form of cash and accepted, the minority holders of securities of

the target company would be cashed out. If the consideration is in the form of securities in the amalgamated company, there would likely be a dilution in the aggregate holdings of the minority holders.

- The amalgamation process under sections 215A to 215J of the Companies Act is yet to be used in a public takeover bid.

4.5 Voluntary delisting

- A voluntary delisting under Rule 1307 of the Listing Manual must be conditional upon the approval by a majority representing at least 75% of the total voting securities of the target company (excluding treasury shares and subsidiary holdings) held by holders present and voting. The bidder and parties acting in concert with it must abstain from voting on the resolution.
- The exit offer must include a cash alternative as the default alternative
- The target company must appoint an independent financial adviser to advise on the exit offer and the independent financial adviser must opine that the exit offer is fair and reasonable.
- An exit offer under Rule 1309 of the Listing Manual is an offer that falls within the ambit of the Code. However, the SIC would normally waive compliance with certain provisions under the Code, subject to conditions.

5. Timeline

As a general rule, the takeover bid process for a mandatory general offer is similar to the process that applies to a voluntary general offer, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary general offer process under the Code.

Step	
1.	Preparatory stage: • Preparation of the bid by the bidder (study, due diligence, financing and draft announcement). • The bidder approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders.
2.	"D" Day (Launching of the bid) – The bidder announces a firm intention to make the offer to the public and the target company. As of that moment, the bid is public, the bidder can no longer withdraw the bid (except in certain limited circumstances such as in the event of a counter-bid or non-fulfilment of a condition) and the powers of the board of the target company are limited.
3.	D + 14 to 21 days ("**T**") – The bidder must post its offer document ("**Offer Document**") not earlier than 14 days but not later than 21 days from the offer announcement date. In the case of a pre-conditional voluntary offer, the bidder may be permitted to post the offer document on a date earlier than 14 days from the offer announcement date.

Step	
4.	T + 14 days – Within 14 days of the posting of the offer document, the board of the target company must send a circular to its shareholders setting out its views on the bid. The circular will contain the opinion of an independent financial adviser, appointed to advise the independent directors of the target company on the offer.
5.	T + 28 days – The offer must remain open for at least 28 days after the date on which the offer document is posted ("**First Closing Date**"). The offer may be extended beyond the First Closing Date subject to the following: • once the offer becomes unconditional as to acceptances, the offer must be extended for at least 14 days from the date on which it would have closed; • the bidder is not allowed to extend the closing date if it has expressly stated that it will not extend the closing date; • if the offer is revised, it must be kept open for at least 14 days from the date of revision; • the offer cannot be extended beyond the 60th day from the posting of the offer document, unless the offer turns or is declared unconditional as to acceptances by then; • in the case of a competitive bid situation, the timetable will be adjusted with respect to the dispatch of the offer document of the latest competing bidder.
6.	First dealing day after the First Closing Date (and all subsequent closing dates or when the offer becomes unconditional as to acceptances) – Announcement of acceptance levels.
7.	T + 39 days – The target will not be able to announce material information, such as trading results, profit or dividend forecasts, asset valuations or major transactions after the 39th day following the posting of the Offer Document, except with the consent of the SIC.
8.	T + 42 days – If the offer is not yet unconditional as to acceptances, accepting shareholders may withdraw their acceptances.
9.	T + 46 days – The last day for the bidder to revise its offer.
10.	T + 53 days – In a competing bid situation, the last day for a potential competing bidder to confirm its intention to make an offer for the target company.
11.	T + 60 days – The last day for the offer to be kept open or declared unconditional as to acceptances, which cannot be extended unless the SIC consents or a competitive bid situation arises.
12.	T + 74 days ("**X**") – The final closing date of the offer, where the offer becomes unconditional as to acceptances on T + 60.
13.	X + 7 business days – Last date for payment of the offer consideration by the bidder (within seven business days of the offer becoming unconditional in all respects or the bidder

Step	
	receiving valid acceptances where such acceptances were tendered after the offer has become or been declared unconditional in all respects).
14.	Squeeze-out or sell-out if the bidder acquired 90% of the shares: • Squeeze-out – within a term of two months after the 90% threshold is met. • Sell-out – within a term of three months following the receipt of notice from the bidder that it holds 90% of the voting securities.
15.	Delisting of the target company – Usually occurs after completion of squeeze-out or sell-out.

Set out below are overviews of the main steps for (i) a voluntary general offer process and (ii) a scheme of arrangement, in Singapore. For a scheme of arrangement, there is no prescribed timeline other than the takeover timetable in the Code for which an exemption is usually obtained. The timeline will be dictated by the parties and the court's availability.

Voluntary general offer process (indicative timeline)

Start proces	
D Day	Launch the bid - Bidder announces a firm intention to make the offer to the target and to the public
D + 14 to 21 (T)	Bidder must post its offer document
T +14	Target sends a circular to shareholders setting out its views on the bid
T + 28	Earliest day to end the offer period (First closing date)
T +39	Final day to announce material information after posting the offer document without the consent of Securities Industry Council
T +42	If the offer is not yet unconditional as to acceptances, accepting shareholders may withdraw their acceptances
T +46	Last day for the bidder to revise its offer
T +53	Last day for a potential competing bidder to confirm its intention to make an offer
T +60	Last day for the offer to be kept open or declared unconditional as to acceptances
T + 74 (X)	Final closing date of the offer (where the offer becomes unconditional as to acceptances on T + 60)
X + 7	Last date for payment of the offer consideration by the bidder
X + 30	Squeeze-out[1] or sell-out[2] if the bidder acquired 90% of the shares
	Delisting of target after squeeze-out/sell-out

14 – 21 days

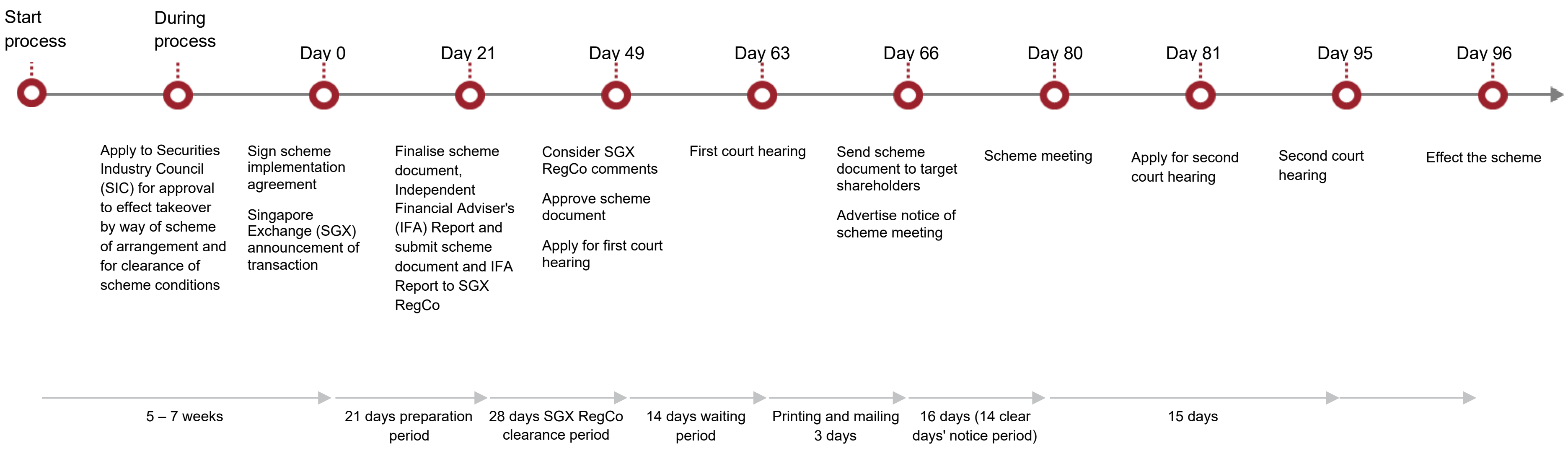
at least 28 days

7 days

1. Squeeze-out – within a term of two months following the close of the offer or when the 90% threshold is reached.

2. Sell-out – within a term of three months following the receipt of notice from the bidder that it holds 90% of the voting securities.

Scheme of Arrangement (indicative timetable)



Start process	
During process	Apply to Securities Industry Council (SIC) for approval to effect takeover by way of scheme of arrangement and for clearance of scheme conditions
Day 0	Sign scheme implementation agreement Singapore Exchange (SGX) announcement of transaction
Day 21	Finalise scheme document, Independent Financial Adviser's (IFA) Report and submit scheme document and IFA Report to SGX RegCo
Day 49	Consider SGX RegCo comments Approve scheme document Apply for first court hearing
Day 63	First court hearing
Day 66	Send scheme document to target shareholders Advertise notice of scheme meeting
Day 80	Scheme meeting
Day 81	Apply for second court hearing
Day 95	Second court hearing
Day 96	Effect the scheme

5 – 7 weeks

21 days preparation period

28 days SGX RegCo clearance period

14 days waiting period

Printing and mailing 3 days

16 days (14 clear days' notice period)

15 days

6. Takeover Tactics

6.1 Inside information

A person who is in possession of "inside information" that relates to any securities listed on the SGX-ST is prohibited from (a) dealing in those securities and (b) communicating (directly or indirectly) the inside information to another person if it knows or ought reasonably to know that the other person would or would be likely to deal in those securities or procure a third person to deal in those securities.

- "*Inside information*" means information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities.
- "*Dealing*" in securities means subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, the securities, or procuring another person to do any of the foregoing.

This difficulty generally arises when a bidder is given the opportunity to conduct due diligence on the target company before a (potential) takeover bid is made (see 3.8 above for further details). In the event that inside information is unearthed during due diligence, the same inside information should be disclosed to the public before a takeover bid is made. This will often be a difficult exercise, and a large gray area will exist as to whether or not certain information constitutes inside information.

6.2 In the event of a public takeover bid

In the event of a (potential) public takeover bid, the Singapore takeover bid rules provide that there must be absolute secrecy before an announcement of a takeover bid. For a partial takeover bid, no announcement can be made unless it is made with the prior approval of the SIC. In addition, before an approach has been made to the target company, if the target company is the subject of rumor or speculation about a possible bid, or if there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential bidder's actions (whether through purchase of the offeree company's shares or otherwise) which have directly contributed to the situation, the potential bidder must make an announcement. Following an approach to the target company, if the target company is the subject of rumors or speculation about a possible bid, or if there is undue movement in its share price or a significant increase in the volume of share turnover, the target company must make an announcement, whether or not there is a firm intention to make an offer.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Singapore law is set forth in the Securities and Futures Act.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities. See 3.3 and 6.1 for more information.

6.4 Stakebuilding

Although stakebuilding is possible, a potential bidder should be aware that it will incur an obligation to publicly disclose its interests in the target when it holds 5% or more of the voting shares (and each change in percentage level thereafter). In addition, a mandatory general offer is triggered if a potential bidder acquires 30% or more of the voting rights of the target company. This obliges the potential bidder to make an offer for all the remaining securities at the highest price paid by it within six months of a mandatory general offer. Conversely, for a voluntary general offer, the potential bidder's minimum bid price is the highest price paid by it within three months of a voluntary general offer. In addition, a stakebuilding exercise will make it more difficult for a potential bidder to invoke the squeeze-out mechanism of minority shareholders, as shares acquired during stakebuilding before the launch of the takeover bid cannot be taken into account when determining if the squeeze-out threshold of 90% is met.

6.5 Irrevocable undertakings

Arrangements by way of irrevocable undertakings to sell shares are not uncommon in Singapore. Under this arrangement, a potential bidder is assured that it will receive a certain level of acceptances for its bid. Typically, a potential bidder will seek to receive undertakings in respect of just over 50% of the total voting rights of the target company.

6.6 Break fees

Break fee arrangements are uncommon in Singapore. Nonetheless, as a general rule under the Code, the break fee must be minimal (normally no more than 1% of the value of the target company, calculated by reference to the bid price). Furthermore, the target company and its financial adviser are required to make full disclosures to the SIC. In this regard, certain capital maintenance issues will have to be addressed, as a Singapore public company is prohibited from giving any financial assistance for the purpose of, or in connection with, the acquisition by any person of shares in the public company.

6.7 Common anti-takeover defense mechanisms

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

Mechanism	Assessment and considerations
1. Capital increase (poison pill) Capital increase by the board without preferential subscription rights of the shareholders.	• In the course of a takeover bid, or even before the date of the takeover bid, if the board of the target company has reason to believe that a *bona fide* takeover bid is imminent, the board of the target company may not issue any shares, grant any options in respect of unissued shares or create, issue or permit the creation or issuance of any securities carrying rights of conversion into or subscription for shares of the target company. • Exceptions: (i) Pursuant to a contract entered into earlier; or (ii) Approval of shareholders holding more than 50% of the total voting rights at a general meeting is obtained. The notice convening such meeting must include information about the bid or anticipated bid.

Mechanism	Assessment and considerations
2. Share buyback Share buyback "with a view to avoiding imminent and serious harm" to the company.	• In the course of a takeover bid, or even before the date of the takeover bid, if the board of the target company has reason to believe that a *bona fide* takeover bid is imminent, the board of the target company may not cause the target company or any subsidiary or associated company to purchase or redeem any shares in the target company or provide financial assistance for any such purchase. • Exceptions: (i) Pursuant to a contract entered into earlier; or (ii) Approval of shareholders holding more than 50% of the total voting rights at a general meeting is obtained. The notice convening such meeting must include information about the bid or anticipated bid
3. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for, the company, which is triggered by a change in control or the launch of a takeover bid.	• In the course of takeover bid, or even before the date of the bid, if the board of the target company has reason to believe that a *bona fide* takeover bid is imminent, the board of the target company may not sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount. • Exceptions: (i) Pursuant to a contract entered into earlier; or (ii) Approval of shareholders holding more than 50% of the total voting rights at a general meeting is obtained. The notice convening such meeting must include information about the bid or anticipated bid.
4. Warrants on new shares Warrants are issued prior to the takeover bid in favor of "friendly person(s)" (without preferential subscription rights of the shareholders) who can exercise the warrants at their option and subscribe for new shares.	• See item 1 above.
5. Cross shareholdings Acquisition of more than 10% of voting rights in the potential bidder (or its subsidiaries) prohibits a bidder	• Subject to the Rule 5 general prohibition under the Code, which provides that in the course of a takeover bid, or even before the date of the takeover bid, if the board of the target company has

Mechanism	Assessment and considerations
from acquiring more than 10% of shares in a target.	reason to believe that a *bona fide* takeover bid is imminent, the board must not take any action on the affairs of the target company that could effectively result in any *bona fide* bid being frustrated or the shareholders being denied an opportunity to decide on its merits. • Exceptions: (i) Pursuant to a contract entered into earlier; or (ii) Approval of shareholders holding more than 50% of the total voting rights at a general meeting is obtained. The notice convening such meeting must include information about the bid or anticipated bid.
6. Frustrating actions Actions such as significant acquisitions, disposals, changes in indebtedness, etc.	• Only pursuant to a contract entered into before the date of the takeover bid and before the board of the target company has reason to believe that a *bona fide* takeover bid is imminent. • Other transactions require the approval of shareholders holding more than 50% of the total voting rights at a general meeting. The notice convening such meeting must include information about the bid or anticipated bid.
7. Shareholders' agreements Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them.	• The shareholders could be considered as "acting in concert". If so, disclosure obligations apply and (a) if they hold less than 30% of voting rights, an obligation to make a takeover bid would arise if any member of that group acquired further shares so that the group's aggregate holdings of voting rights reached 30% or more, or (b) if they hold between 30% to 50% of voting rights, an obligation to make a takeover bid would arise if any member of that group acquired shares which would result in aggregate acquisitions by the group amounting to more than 1% of the voting rights in any six-month period.
8. Limitation of voting rights Clause in the articles of association providing for a proportional restriction of voting rights (applying to all shareholders equally).	• Subject to the Rule 5 general prohibition under the Code, which provides that in the course of a takeover bid, or even before the date of the takeover bid, if the board of the target company has reason to believe that a *bona fide* takeover bid is imminent, the board must not take any action on the affairs of the target company that could effectively result in any *bona fide* takeover bid being

Mechanism	Assessment and considerations
	frustrated or the shareholders being denied an opportunity to decide on its merits. • A possible exception is if the approval of shareholders holding more than 75% of the total voting rights at a general meeting is obtained for the amendment to the constitution of the target company, with the notice convening such meeting to include information about the bid or anticipated bid. However, the curtailment of voting rights could be in contravention of paragraph 8(a) of Appendix 2.2 of the Listing Manual.
9. Veto rights for certain shareholders Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms.	• Subject to the Rule 5 general prohibition under the Code, which provides that in the course of a takeover bid, or even before the date of the takeover bid, if the board of the target company has reason to believe that a *bona fide* takeover bid is imminent, the board must not take any action on the affairs of the target company that could effectively result in any *bona fide* takeover bid being frustrated or the shareholders being denied an opportunity to decide on its merits. • Exceptions: (i) Pursuant to a contract entered into earlier; or (ii) Approval of shareholders holding more than 75% of the total voting rights at a general meeting is obtained for the amendment to the constitution of the target company. The notice convening such meeting must include information about the bid or anticipated bid.
10. Limitations on share transfers Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders.	• A listed target company must ensure that, in its constitution, there shall be no restriction on the transfer of fully paid securities except where required by law or the Listing Manual. • Private arrangements between shareholders to limit share transfers are still possible. • Shareholders could be considered as "acting in concert". If so, see "Shareholders' agreements" above.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, following the takeover bid, the bidder receives acceptances of not less than 90% of the total number of issued shares (subject to the shareholder exclusions set out below as at the date of the takeover bid and excluding any shares held as treasury shares), the bidder can compulsorily acquire the shares of the remaining shareholders. The following shareholders are excluded from the calculation of the 90% threshold:

(a) the bidder, its related corporations or their respective nominees;

(b) a person under the influence of the bidder (i.e. who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the bidder) in respect of the target company);

(c) the bidder's close relatives, i.e., spouse, children, including adopted children and step-children, parents and siblings;

(d) a person who influences the bidder (i.e. whose directions, instructions or wishes the bidder is accustomed or is under an obligation whether formal or informal to act in accordance with), in respect of the target company; and

(e) a body corporate controlled by the bidder or a person described in (b), (c) or (d). "Control' is defined to mean the ability or right to exercise not less than 50% of the voting power in the body corporate, or the ability to influence the body corporate or a majority of the body corporate's directors.

The remaining shareholders are entitled, within one month from the date on which notice is given by the bidder, to apply to court to have the acquisition stopped. However, this is uncommon in practice, as the burden of proof is on the remaining shareholder to show that the proposed acquisition is unfair or not made *bona fide*. If no application is made, the bidder will be bound to acquire those shares.

7.2 Sell-out

If the takeover bid results in the bidder or its nominees holding 90% or more of the total number of issued shares of the target company (including any shares held as treasury shares, which are treated as having been acquired by the bidder), the shareholders who have not accepted the offer have a right to require the bidder to acquire their shares on the same terms as those offered under the offer. A remaining shareholder may exercise its sell-out rights within three months of the bidder giving notice of it reaching the 90% threshold.

7.3 Restrictions on acquiring securities after the takeover bid period

Where a general offer has been announced or posted but is withdrawn or lapses, the bidder and its concert parties are prohibited, within a period of 12 months from the date such offer is withdrawn or lapses, from either announcing an offer or possible offer for the target company or acquiring any voting rights of the target company if the bidder or its concert parties would thereby become obliged under the Code to make a mandatory general offer.

In addition, neither the bidder nor its concert parties may, within six months of the closure of any previous offer made by it which became or was declared unconditional in all respects, make a second offer to, or acquire any securities from, any shareholder in the target company on terms better than those made available under the previous offer.

8. Delisting

Following a mandatory or voluntary general offer, if the bidder exercises its squeeze-out rights to achieve 100% ownership of the target company, an application is made by the listed target company to the SGX-ST for confirmation of delisting.

If the bidder is unable to exercise its squeeze-out rights but the percentage of the total number of issued shares (excluding treasury shares) held in public hands nevertheless falls below 10%, the listed target company must announce that fact as soon as practicable and the SGX-ST will at the close of the offer suspend the trading of all the shares. The SGX-ST may allow the listed target company a period of three months (or a longer period if the SGX-ST agrees) to raise the percentage of shares in public hands to at least 10%, failing which the listed target company may be delisted from the SGX-ST.

The target company may also choose to apply to the SGX-ST for a voluntary delisting, which is subject to the target company holding a general meeting to seek shareholder approval for the delisting, and an exit offer (which must be opined upon as fair and reasonable by an independent financial adviser) must be made. The resolution to delist must be approved by a majority of at least 75% of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by the shareholders present and voting on a poll. The bidder and parties acting in concert with it must abstain from voting on the delisting resolution. See 4 for more details.

In addition to the above, a delisting can be effected through the following mechanisms:

- A scheme of arrangement under section 210 of the Companies Act, which provides for an acquisition of the securities of the target company on an 'all or nothing' basis. If the scheme is successful in obtaining the requisite majority approval of the different classes of holders, then the bidder can acquire all the shares of the target company, including dissenting shareholders' shares. This would result in a delisting of the target company. See 4 for more details.

- An amalgamation under sections 215A to 215J of the Companies Act, whereby the target company is amalgamated with the bidder, with the bidder or special purpose vehicle remaining as the surviving entity. As the target company ceases to exist, it would result in a delisting of the target company. See 4 for more details.

- A selective capital reduction under section 78G of the Companies Act, where all the shares held by the minority shareholders will be cancelled, with a sum constituting part of the total paid-up share capital of the target company being cancelled and returned to the minority shareholders. However, this exercise requires (a) a special resolution to be passed at a general meeting on a poll, i.e., approval of at least 75% of all shares voted by shareholders present and voting on a poll at the general meeting, with the bidder and its concert parties to abstain from voting; and (b) the approval and confirmation by the High Court.

Separately, after delisting, if the target company is incorporated in Singapore and has no more than 50 shareholders, a special resolution may be passed to privatize the target company.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Min-tze Lean in the Singapore office is the most appropriate contact within Baker & McKenzie.Wong & Leow* for inquiries about public M&A in Singapore.

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South Africa

1. Overview

South Africa's takeover regulations are well established and highly developed, with the regulatory framework having been in place for several decades and a substantial body of market practice having formed. The public M&A market in South Africa has been active over the last few years, however we are increasingly seeing more regular take privates with a large number of entities de-listing from the Johannesburg Stock Exchange ("**JSE**"). Friendly takeovers involving either a tender offer or scheme of arrangement are the most commonly used transaction structures. It is rare to see a hostile takeover in South Africa.

2. General Legal Framework

2.1 Main legal framework

Public mergers, acquisitions and takeovers in South Africa are primarily regulated by the South African Companies Act, 71 of 2008 ("**Companies Act**"), which incorporates the South African Takeover Regulations ("**Takeover Regulations**").

2.2 Other rules and principles

There are a number of additional rules and principles that must be taken into account when preparing or conducting a public takeover bid in South Africa, including:

- the rules relating to the disclosure of significant shareholdings in listed companies, as contained in the Companies Act and the Takeover Regulations;
- the rules regarding the offer of securities to the public and the admission to trading of these securities on a regulated market, in circumstances where the consideration that is offered in a public takeover bid consists of securities offered to the public, as contained in the Companies Act;
- the rules relating to insider dealing and market manipulation (the so-called market abuse rules), as contained in the Financial Markets Act, 19 of 2012 ("**FMA**");
- the rules on the supervision and control of the financial markets, as contained in the FMA; and
- the rules and regulations regarding merger control, as contained in the Competition Act, 89 of 1998 ("**Competition Act**").

In addition, public companies with shares listed on the JSE are required to adhere to the JSE Listings Requirements ("**JSE Listings Requirements**") in the context of a takeover bid.

2.3 Supervisory bodies

Legislation/Rules	Supervisory Body	Role/Function
Companies Act and Takeover Regulations	Takeover Regulation Panel ("**TRP**")	Approval, regulation and investigation of affected transactions, which include takeovers.
Competition Act	Competition Commission	Intermediate and large merger transactions must be notified to and approved by the Competition

Legislation/Rules	Supervisory Body	Role/Function
	Competition Tribunal	Commission and Competition Tribunal, respectively (see 4.9).
Exchange Control Regulations	Authorized foreign exchange dealers (South African commercial banks) and Financial Surveillance Department of the South African Reserve Bank ("**SARB**")	Regulates exchange control matters in relation to cross-border transactions.
JSE Listings Requirements	JSE	Certain procedural requirements have been prescribed for transactions involving listed companies or their subsidiaries which may include mergers and takeovers. The requirements will depend on the categorization of the transaction with reference to the market capitalization of the target.
FMA	Financial Sector Conduct Authority	Prosecutes insider trading and other types of market abuse.

Contravention of the above legislation/rules can result in administrative fines and, in some cases, criminal sanctions being imposed on the offender.

2.4 Foreign investments

Foreign investments are not restricted in South Africa, unless in the context of specific industries and sectors (such as the mining industry as set out in 2.6 below) where foreign investment may be limited.

2.5 General principles

A number of general principles apply to public takeovers in South Africa, which are borne out of the provisions of, among others, the Takeover Regulations:

- all holders of the securities of the target of the same class must be afforded equivalent treatment. Moreover, if a person acquires or intends to acquire control of a company, the other holders of securities must be protected;
- securities holders of the target company must have sufficient time and information to enable them to reach a properly informed decision on the bid;
- the target company's board must act in the best interests of the target and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- false markets must not be created in the securities of the target, the bidder or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- a bidder must announce a bid only after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

- the target must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

In rare circumstances, the Takeover Regulations will apply to private companies undertaking an "affected transaction" (defined below). A private company is a "regulated company" (and therefore falls within the ambit of the Takeover Regulations) if more than 10% of its shares have transferred within the previous 24 months. This will soon change as the Companies Amendment Act of 2024 introduces new criteria for private companies to fall within the ambit of the Takeover Regulations, namely if it:

- has 10 or more shareholders with direct or indirect shareholding in the private company; and
- meets or exceeds the financial threshold of annual turnover or asset value to be determined by the Minister, either generally or in relation to specific industries. This threshold has yet to be specified.

Consequently, companies that were previously exempt from these additional requirements will now be required to comply with the Takeover Regulations or seek exemptions when engaging in affected transactions. These transactions include, but are not limited to, the sale of all or a substantial part of the company's assets or undertakings, mergers, schemes of arrangement, mandatory offers, and squeeze-outs. These latest amendments are not yet in effect and it is not clear as to when they will be brought into force.

2.6 Black Economic Empowerment ("**BBBEE**")

To enable economic empowerment of previously disadvantaged South Africans, the South African government promulgated the Broad-Based Black Economic Empowerment Act, 53 of 2003 ("**BBBEE Act**"). The BBBEE Act, read together with the 2015 BBBEE Codes of Good Practice ("**Codes**"), sets out a scoring matrix which rates a company's compliance with the BBBEE Act and the Codes against various metrics, including black ownership, management, employment equity, skills development, preferential procurement, enterprise development and socio-economic development. Compliance with BBBEE in South Africa is not required by law (other than in certain specific sectors such as the minerals and mining sector). However, having a higher BBBEE rating provides entities with a competitive advantage, particularly when supplying to the Government of South Africa, which will require its suppliers to have a sufficient BBBEE rating. In the private sector, BBBEE instead works on an incentive basis, as companies work for higher BBBEE rating levels in order to remain competitive in the South African market. Therefore, the point of departure for BBBEE in South Africa is that an entity will aim for a higher BBBEE rating level in order to attract customers looking to improve the enterprise and supplier development element on their own BBBEE scorecard. Thus, entities score points towards their own BBBEE rating level when procuring goods and services from supplying entities with high BBBEE rating levels.

Certain industry sectors are subject to stricter BBBEE requirements. For example, the BBBEE rules applicable to the mining sector presently requires that 26% of the shares of a company that engages existing in mining and prospecting activities must be held by historically disadvantaged South Africans ("**BEE Shareholding**"), failing which the mining and prospecting rights of the company are at risk of being suspended or cancelled by the South African Department of Mineral Resources ("**DMR**"). In terms of the New Mining Charter published by the DMR, applicants for a new mining or prospecting right must have a minimum of 30% BEE Shareholding.

Accordingly, in structuring a takeover bid, it is important to take account of the effect of the transaction on the target's BBBEE rating, especially in the case of a 100% takeover where the target's existing BBBEE shareholder is to exit, creating a need for a replacement BBBEE shareholder to be introduced at the time or shortly after implementation of the transaction. In these circumstances, it is not uncommon for the bidder to be a consortium which includes a BBBEE shareholder.

Moreover, from a competition law perspective, the South African Competition Authorities have been increasingly imposing requirements to promote ownership by Historically Disadvantaged Persons in merger scenarios. This requirement aims to ensure that mergers and acquisitions contribute to economic transformation and inclusivity, aligning with the broader objectives of the BBBEE framework. Failure to comply with these conditions imposed by the Competition Authorities may result in the Competition Authorities withholding approval of the merger transaction.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers attaching to different levels of shareholding within a South African public company. In its constitutional documents, a company may vary the percentage of voting rights required to approve any special resolution provided that, at all times, there is a margin of at least 10% between the highest established requirement for an ordinary resolution and the lowest established requirement for a special resolution. The table is based on the assumption that no such variation is made, and that the default position under the Companies Act applies.

Shareholding	Rights
One share	• Right to receive notice of and to attend and vote at all shareholders' meetings. • Right to inspect and copy the information contained in the records of the company, including the memorandum of incorporation, records in respect of the company's directors, annual financial statements, notices and minutes of annual meetings and the securities register. • Appraisal rights (provisions in the Companies Act which allow a dissenting shareholder to sell its shares to the company for fair value in the event of certain fundamental decisions being made by the company, such as an amendment to the company's constitutional documents in a manner materially adverse to the rights or interests of the dissenting shareholder). • Right to be represented by proxy. • Right to apply to court to set aside a resolution of a company placing it into business rescue. • Right to apply to court to have a director declared delinquent. • Right to apply to court for relief from oppressive or prejudicial conduct of the company.
10%	Right to demand that a polled vote be held on a particular matter at a shareholders' meeting.

Shareholding	Rights
> 25%	• Right to constitute a quorate shareholders' meeting (at least 25%). • Ability to veto/block the passing of a special resolution (75% vote) of shareholders.
> 50%	The ability to take decisions in respect of the following actions for which the approval of an ordinary resolution (>50% vote) is required: • appoint and dismiss directors; • appoint the company's auditor; • elect members of the company's audit committee; and • take any decision for which a special resolution (75% vote) is not required and in respect of which a vote may be proposed at a general shareholders' meeting.
75%	The ability to take decisions in respect of the following actions for which the approval of a special resolution (75% vote) is required: • amend the company's memorandum of incorporation; • ratify a consolidated revision of a company's memorandum of incorporation; • ratify any action by the company or its directors that is inconsistent with any limit, restriction or qualification in the company's memorandum of incorporation; • authorize any issue of shares or securities convertible into shares, or a grant of options or any other right exercisable for securities and which are issued to a director, prescribed officer or related or inter-related party of the company; • authorize any issue of shares or securities convertible into shares, or a grant of options or any other right exercisable for securities to any person if the voting power of the class of shares that are issued or issuable as a result of the transaction will be equal to or exceed 30% of the total voting power of all the shares of that class; • authorize any provision of financial assistance to a related or inter-related company (other than a subsidiary) or person or director of the company or for the purpose of the subscription of any securities issued or to be issued by the company; • authorize the repurchase by the company of its own shares (share buybacks); • authorize the payment of any remuneration by a company to its directors for their services as directors;

Shareholding	Rights
	• approve the voluntary winding-up of a solvent company; • allow a court to wind up a solvent company; • approve the transfer of the registration of the company to a foreign jurisdiction; • approve any proposed fundamental transaction (see 3.2); and • approve any other matter for which a company's memorandum of incorporation requires the approval of a special resolution (75% vote).

3.2 Methods of acquisition

The main methods of obtaining control of a public company are as follows:

- scheme of arrangement;
- merger or amalgamation; and
- takeover bid.

A scheme of arrangement is the most commonly used mechanism to implement a transaction for obtaining control of a public company. It is broadly defined and includes most arrangements concluded between the company and holders of any class of its securities.

The statutory merger or amalgamation provisions of the Companies Act are seldom used as it requires all known creditors of the target to be notified of the transaction, whereupon creditors can intervene in the transaction even after it has been approved by shareholders and a merger agreement had been signed. Furthermore, creditors could apply for leave to have the merger reviewed by the courts, which could substantially delay implementation of the transaction even if the creditors' review application should fail.

A scheme of arrangement and statutory merger are "fundamental transactions". All fundamental transactions require the approval of a special resolution (75% affirmative shareholder vote) and may also require court approval if either:

- the special resolution is opposed by at least 15% of the voting rights exercised, and any person who voted against the resolution requires the company to seek court approval; or
- the court grants leave to a single dissenting shareholder to require that the fundamental transaction be approved by the courts.

Lastly, a bidder may obtain control of a public company through a takeover bid.

3.3 Due diligence

Due diligence investigations are not uncommon in friendly takeover bids. There are no specific rules governing these. The scope and extent of the due diligence investigation are dependent on, among other things, the time available to conduct the investigation, the need to preserve confidentiality and comply with insider trading rules (see 3.5) and the level of cooperation by the target board.

In a hostile bid scenario, there is no obligation on the target board to disclose any information and it is unlikely that they would permit a due diligence to be undertaken. The bidder would be limited to reviewing publicly available information on the target.

In relation to affected transactions (which includes the methods of acquiring control discussed in 3.2), competing bidders are entitled to equal access of information. Therefore, information made available by the target to one bidder would have to be made available to a competing bidder.

3.4 Secrecy and cautionary announcements

Before a takeover bid is announced, discussions between an independent board (appointed under the Takeover Regulations to consider a takeover bid) and a bidder must be kept confidential. Any person who has been made aware of confidential or price-sensitive information as a result of or concerning a potential bid must:

- not disclose that information; and
- conduct themselves in a manner which reduces the risk of such information being leaked.

If, at any stage, a company has acquired any confidential or price-sensitive information, it must publish a cautionary announcement through the JSE's SENS, unless the confidentiality of such information can be maintained for a limited period of time.

The purpose of the cautionary announcement is to alert existing and potential future shareholders that the target is the subject of potential corporate action, and that they must accordingly exercise care in trading in the company's securities until it has made a detailed announcement.

3.5 Insider trading and market abuse

"Inside information" is defined as specific or precise information which has not been made public, is obtained or learned as an "insider" and, if it were to be made public, would be likely to have a material effect on the trading price or value of any listed security.

An "insider" is broadly defined as any person who has inside information

- through:
    - being a director, employee or shareholder of a listed company to which the inside information relates; or
    - having had access to such information by virtue of employment, office or position; or
- where such person knows that the direct or indirect source of the information was a director, employee or shareholder, or person who had access to such information by virtue of employment, office or position.

Any person who comes into possession of inside information at any stage of the transaction will, save for certain exceptions provided for in the FMA, be prohibited from acting on that information by dealing in securities in the target until either:

- the specific inside information of which it is aware is made public; or
- full details of the bid are made public through an announcement.

Market abuse mainly involves:

- market manipulation, being knowingly participating in any practice which has the effect of creating a false or deceptive appearance of the demand for, supply of, trading activity or artificial price for a security; or
- false, misleading or deceptive statements in respect of any material fact relating to a listed security.

Any contravention of the insider trading and market abuse rules is a criminal offense and could lead to both imprisonment and significant fines being imposed on the offender.

3.6 Stake-building and disclosure of shareholding

The rules regarding disclosure of shareholdings apply before, during and after a public takeover bid, and are relevant when a bidder starts building up a stake in the target.

Any person who acquires a beneficial interest in sufficient shares of a public company such that, as a result of the acquisition, the person holds a beneficial interest of 5%, or any multiple of 5%, is required to notify the company within three business days of such acquisition through a prescribed disclosure notice.

After receiving a disclosure notice, the company must file a copy with the TRP.

Furthermore, a listed company is required to:

- disclose in its annual financial statements all shareholders which directly or indirectly hold 5% or more of it shares; and
- within 48 hours after receiving a disclosure notice, publish the information contained in the disclosure notice on SENS.

3.7 Agreements with shareholders

In a takeover bid scenario, it is common for the bidder to obtain irrevocable undertakings to support and vote in favor of the proposed transaction from the target's main or institutional shareholders prior to formally submitting its bid.

This is subject to the following restrictions:

- only shareholders holding 5% or more of the aggregate securities subject to the offer may be approached;
- not more than 5 such shareholders may be approached;
- the relevant shareholders must sign confidentiality undertakings in relation to the offer; and
- the shareholders must adhere to the provisions of the FMA, in relation to insider trading prior to the announcement of the offer (see 3.5).

The undertakings are usually conditional upon:

- the requisite approvals being obtained (including shareholder approval for the transaction);
- the bid being made within a certain period; and
- the bidder being satisfied with the outcome of any due diligence investigation it decides to undertake.

4. Effecting a Takeover

4.1 Types of takeover bids

There are three main forms of takeover bids in South Africa:

- a general takeover bid, in which a bidder voluntarily makes an offer for 100% of the voting securities issued by the target;
- a mandatory takeover bid, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of 35% of the voting securities of the target; and
- a squeeze-out bid, in which a shareholder who already holds 90% of the voting securities can squeeze out the remaining holders of voting securities. This type of bid can be combined with a voluntary or mandatary takeover bid.

Voluntary takeover bids can be either friendly (negotiated) or hostile. A friendly takeover involves the bidder approaching the target board prior to making a formal bid to the target's shareholders. The target board agrees to the offer and either recommends it to the shareholders or remains neutral.

A hostile takeover is where the bidder approaches the target board, the target board opposes the bid and advises the shareholders to reject the offer; whereafter the bidder makes an offer directly to the shareholders. Hostile takeovers are less common than friendly takeovers in the South African market.

4.2 How and when a bid is made public

The Takeover Regulations provide that a takeover bid must be notified by the bidder in writing to the target's board.

The takeover bid is made public through the release of a "firm intention announcement". Such announcement must be made immediately when the target board receives a formal written offer, or where a mandatory offer is required (discussed in 4.3). The target is responsible for making the announcement where the target board has received a formal written offer, whilst the bidder is required to make the announcement in the case of a mandatory offer. The announcement is published in the press and on SENS, and must contain, among other things:

- the terms of the offer;
- the identity of the bidder and any concert parties;
- the details of any existing holders of shares in the target;
- all material conditions to which the offer is subject; and
- the details of any arrangements which exist between the bidder and the target or any concert party of either of them.

4.3 Mandatory offer

The threshold for triggering a mandatory offer to also acquire all of the securities of the remaining shareholders is the acquisition of 35% or more of the voting securities of a company or of any class of such securities. For purposes of determining such holding, the holdings of all persons acting in concert are aggregated.

A bidder is exempt from the requirement to make a mandatory offer if (i) the bidder would acquire voting securities in the target by means of an issue of securities (and not a direct sale from a offeree shareholder); (ii) the holders of a majority of the independent shares of the target, i.e., shareholders other than the bidder and its concert parties, have agreed to waive the mandatory offer; and (iii) the TRP exempts the bidder from making a mandatory offer.

4.4 Minimum offer price

If the bidder (or any person acting in concert with a bidder), has acquired securities in the target within the six-month period before the commencement of the offer period, then the minimum offer price must be (i) identical to, or where appropriate, similar to the highest consideration paid by the bidder for those acquisitions and (ii) accompanied by a cash consideration, at not less than the highest cash consideration paid if the shares that carry 5% or more of the voting rights were acquired for cash. If the bidder considers that the highest consideration for historic acquisitions ought not to apply in a particular case, it may consult the TRP for approval to adjust the offer consideration.

Further, for six months after the later of the (i) closing date of an offer; or (ii) date on which the offer became unconditional, the bidder or its concert parties may not make a second offer to shareholders of the target on more favorable terms than those made under the original offer.

4.5 Form of consideration

The acquisition consideration may be discharged in cash or shares, or a combination of cash and shares.

Where the consideration is wholly or partly in cash, the bidder must provide the TRP with an irrevocable unconditional guarantee issued by a South African registered bank, or an irrevocable unconditional confirmation from a third party that sufficient cash is held in escrow, to provide security for payment of the consideration. Such confirmation must be provided both at the time that the firm intention announcement is made and also on posting of the offer circular to shareholders. It is therefore not possible for the bid to be conditional on the bidder obtaining finance.

A bidder cannot offer shares in a foreign company which is not listed on the JSE as consideration, without the approval of the Exchange Control Department of the SARB. The Exchange Control Department does allow this form of consideration, but is likely to impose conditions regarding the sale of the shares and the repatriation of the proceeds of the sale.

4.6 Conditions

It is common for takeover offers to be subject to regulatory and other conditions. Regulatory conditions typically include anti-trust approval, the approval of the exchange control authorities (for cross-border transactions) and the approval of industry regulators, depending on the industry sector to which the target belongs. Other conditions may include obtaining shareholder approval and the consent of counterparties to material contracts of the target which contain change of control provisions. An offer may not be subject to any condition that is dependent solely on the subjective judgment of the directors of the bidder, or where the directors of the bidder are able to control the fulfilment (or not) of such a condition.

In addition, if the bidder intends to obtain:

- 100% of the target's shares, it will bargain for a condition that 90% of the target's shareholders accept the offer; or
- control of the target, it will bargain for a condition that more than 50% of the target's shareholders accept the offer.

In the case of schemes of arrangement or mergers and amalgamations, the offer will be conditional upon 75% of the shareholders voting in favor of the transaction.

4.7 Restrictions on launching new offers (put-up or shut-up)

Where an offer has been announced or posted but has not become or been declared unconditional, and has then been withdrawn or has lapsed, neither the bidder nor its concert parties can, for 12 months following the date on which the offer is withdrawn or lapses:

- make an offer for the target; or
- acquire any shares of the target which would result in a mandatory offer requirement being triggered.

4.8 Restriction on frustrating action

If the board of the target believes that a bona fide offer might be imminent, or has received such offer, the board must not:

- take any action in relation to the affairs of the target which could result in the (i) offer being frustrated or (ii) shareholders being denied an opportunity to decide on the merits of the offer;
- issue any shares or convertible securities or grant any options;
- sell or dispose of or agree to sell or dispose of a material asset (except in the ordinary course of business);
- enter into contracts other than in the ordinary course of business; or
- make a distribution that is abnormal as to timing and amount,

without the consent of the TRP and shareholders, or in terms of a pre-existing obligation or agreement.

4.9 Regulatory approvals

(a) Antitrust approval

Intermediate and large mergers require prior notification to and approval from the South African Competition Authorities.

A transaction must be notified as an intermediate merger and approved by the South African Competition Commission if:

- the target firm has assets or turnover of ZAR 100 million or more; and
- the parties to the merger have combined assets or annual turnover of ZAR 600 million or more.

A transaction must be notified as a large merger and approved by the South African Competition Tribunal if:

- the target firm has assets or turnover of ZAR 190 million or more; and
- the parties to the merger have combined assets or annual turnover of ZAR 6.6 billion or more.

(b) Exchange control approval

In general, there are no restrictions on foreign ownership of shares. However, certain industries (including banking, insurance and broadcasting) have specific statutory restrictions on the percentage shareholding in a South African company by foreign shareholders.

In addition, all dealings in and registration of shares in which non-residents of South Africa are involved are governed by the Exchange Control Regulations.

In the case of a disposal of shares in a South African target to a non- resident, the shares in the South African target will constitute "controlled securities" for exchange control purposes.

As regards on-market disposals of shares in the South African target, upon transfer of the shares from the seller to the buyer, the relevant Central Securities Depository ("**CSD**") will record the buyer's residential status (i.e. being a non-resident) in the registers of both the CSD and the authorized dealer, against presentation of the broker's note indicating the value of the trade.

In relation to off-market disposals of shares in the South African target, documentary evidence such as a sale agreement or validated trade advice and auditors' certificates, where applicable, must be viewed by the relevant CSD in order to ensure that such transactions are concluded at arm's length and at fair and market related prices.

In the absence of exchange control approval for the transaction, the South African target would be prohibited from remitting dividends and other distributions to a non-resident shareholder offshore.

(c) Industry-specific regulations

There are a number of other industry-specific regulations that may be applicable, for example in the banking, mining and communications industries.

(d) Foreign investment regulation

There is no overarching foreign investment regulation regime in South Africa, however there are draft regulations which have not yet come into force. There is no estimate as to when these draft regulations will become effective. As per section 2.4 above, in certain industries there are sectoral regulations which may apply.

(e) TRP Approval

An offer may not be implemented or given effect until (a) a request has been made to the TRP for a compliance certificate, certifying that the Takeover Regulations have been complied with; and (b) the TRP has issued such compliance certificate. This is usually the last condition to the offer to be fulfilled.

5. Timeline

The Takeover Regulations provide a strict timetable in relation to takeover offers, as set out below:

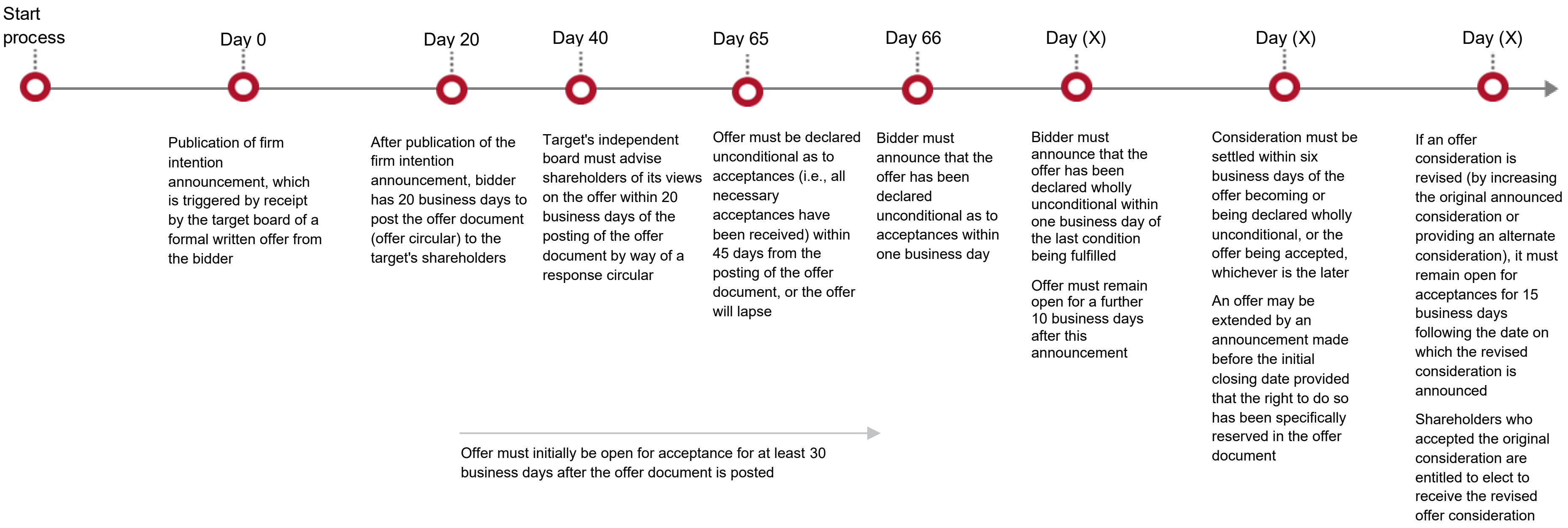
No.	Event
1.	The timetable commences with the publication by the company of a firm intention announcement, which is triggered by receipt by the target board of a formal written offer from the bidder.

No.	Event
2.	After publication of the firm intention announcement, the bidder has 20 business days to post the offer document (offer circular) to the target's shareholders.
3.	The offer must initially be open for acceptance for at least 30 business days after the offer document is posted.
4.	The target's independent board must advise its shareholders of its views of the offer within 20 business days of the posting of the offer document by way of a response circular.
5.	The offer must be declared unconditional as to acceptances (that is, all the necessary acceptances have been received) within 45 days from the posting of the offer document, or the offer will lapse.
6.	Once the offer has been declared unconditional as to acceptances, the bidder must announce that fact within one business day.
7.	After the offer has become unconditional in all respects, the offer must be announced as being unconditional within one business day, whereafter the unconditional offer must remain open for at least 10 business days after such announcement.
8.	Consideration for the offer must be settled within six business days of the offer becoming or being declared wholly unconditional, or the offer being accepted, whichever is the later.
9.	An offer may be extended by an announcement made prior to the initial closing date provided that the right to do so has been specifically reserved in the offer document.
10.	If an offer consideration is revised (by increasing the original announced offer consideration or providing an alternate consideration to the original announced offer consideration), it must remain open for acceptances for 15 business days following the date on which the revised offer consideration is announced. Shareholders who have accepted the original offer consideration are entitled to revise their initial acceptance and elect to receive the revised offer consideration

If a competing offer is announced in respect of the target, both bidders will usually be bound by the timetable established by the competing offer.

Set out below is an overview of the main steps for a public voluntary takeover offer in South Africa.

Public voluntary takeover offer (indicative timeline)



Start process

Day 0

Publication of firm intention announcement, which is triggered by receipt by the target board of a formal written offer from the bidder

Day 20

After publication of the firm intention announcement, bidder has 20 business days to post the offer document (offer circular) to the target's shareholders

Day 40

Target's independent board must advise shareholders of its views on the offer within 20 business days of the posting of the offer document by way of a response circular

Day 65

Offer must be declared unconditional as to acceptances (i.e., all necessary acceptances have been received) within 45 days from the posting of the offer document, or the offer will lapse

Day 66

Bidder must announce that the offer has been declared unconditional as to acceptances within one business day

Day (X)

Bidder must announce that the offer has been declared wholly unconditional within one business day of the last condition being fulfilled

Offer must remain open for a further 10 business days after this announcement

Day (X)

Consideration must be settled within six business days of the offer becoming or being declared wholly unconditional, or the offer being accepted, whichever is the later

An offer may be extended by an announcement made before the initial closing date provided that the right to do so has been specifically reserved in the offer document

Day (X)

If an offer consideration is revised (by increasing the original announced consideration or providing an alternate consideration), it must remain open for acceptances for 15 business days following the date on which the revised consideration is announced

Shareholders who accepted the original consideration are entitled to elect to receive the revised offer consideration

Offer must initially be open for acceptance for at least 30 business days after the offer document is posted

6. Takeover Tactics

6.1 Exclusivity agreements

Exclusivity agreements are usually executed as a method of restricting the target from soliciting or engaging other potential buyers. Adherence to the provisions of these agreements is incentivized by provisions to pay "break fees". Break fees are not formally regulated, but in terms of the TRP's guidelines, a break fee cap of 1% of the value of the transaction is normally acceptable.

The effectiveness of exclusivity agreements is, however, weakened in light of the fiduciary duties owed by directors. Two of the most fundamental duties of the directors are to act in good faith and in the best interest of the company. This requires that the directors ensure that the bid they recommend is in the best interests of the company. The Companies Act furthermore prohibits the directors of a company from taking actions designed to frustrate a bona fide offer, or the shareholders' ability to consider the offer on its merits. In fact, one of the mandates of the TRP is to "prevent actions by a regulated company designed to impede, frustrate or defeat a bid, or the making of a fair and informed decision by the [shareholders]". Therefore, the effect of an exclusivity agreement is limited to restraining a board from actively soliciting, or seeking to solicit, competing bids.

6.2 Anti-takeover tactics

Given that hostile takeovers remain relatively uncommon in the South African market and the restrictions imposed on the board of a target in relation to frustrating a takeover offer (see 6.1 above), the options available to a target to defend a takeover are limited in their development.

The common approach adopted by a target's board is to be uncooperative with respect to the joint mandates of the bidder and the target (such as jointly submitting the merger filing to the competition authorities). Furthermore, the board may seek to impose as many procedural and administrative hurdles to the bid process as possible. This involves a careful balancing act, as the target board must not be seen to be breaching its fiduciary duties and obligations under the Companies Act. Reliance has also been placed on the TRP and other takeover authorities such as the Competition Commission to hinder takeover bids.

7. Compulsory acquisition or Squeeze-out of Minority Shareholders after Completion of the Takeover

Where a takeover offer is made and 90% of a particular class of the target's shareholders accept the offer:

- the bidder can compel the non-accepting shareholders in that class to also sell their shares ("**Squeeze Out**"); and
- a non-accepting shareholder in that class may demand that the bidder acquire its shares.

A court may, in certain circumstances, allow such a Squeeze-Out despite the fact that less than 90% of shareholders of a particular class have accepted the offer.

A non-accepting shareholder can apply to court, within 30 business days of the posting of the Squeeze Out notice, for an order to prohibit the compulsory sale or to make it subject to certain conditions.

Where a scheme of arrangement is proposed, once the scheme of arrangement has been approved by special resolution (75% vote), all the shares (including the shares of those shareholders who voted against the scheme at the scheme meeting) can be acquired by the bidder.

8. Delisting

The most utilized method for a listed company to delist its shares is for it to:

(a) send a circular to its shareholders:

- seeking their approval to delist;
- clearly stating the reasons for the delisting; and
- containing a bid to the shareholders for their shares accompanied by a statement from the board of directors that the bid is fair (who, in turn, have been so advised by an independent expert appointed for that purpose); and

(b) submit a written application to the JSE stating from which time and date it wishes the delisting to be effective.

The JSE Committee will approve the delisting if the aforementioned shareholder approval has been obtained and the company has stated the reasons for its delisting in the written application.

The circular and shareholder approval will not be required if:

- in terms of a takeover bid, the bidder is to hold more than 90% of the shares in a regulated company and notice was given by the bidder of its intention to delist the shares in the initial bid document or any subsequent circular sent to the shareholders; or
- following the completion of a scheme of arrangement with shareholders, the bidder has acquired all the shares in the company or the JSE is satisfied (in its discretion) that the company no longer qualifies for a listing.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Contacts within Baker McKenzie

Lydia Shadrach-Razzino and Tanya Seitz in the Johannesburg office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in South Africa

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Spain

1. Overview

The market for control in Spanish listed companies was particularly active during 2024, with over 10 takeover bids announced. This is a significant increase compared to the five takeover bids announced in 2023, and aligns with the trend observed in the previous years and even during the COVID-19 outbreak.

Between 1 January 2019 and 1 January 2025, the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*, or the "**CNMV**") authorized a total of 27 public takeover bids, of which more than two thirds consisted of transactions to gain a controlling interest in the relevant target company, while the rest were delisting takeover bids or were launched by the target companies themselves within the context of share buyback transactions. With regard to the identity of the bidders, there has been a clear increase in the number of takeover bids tendered by private equity funds in the context of public to private transactions.

As it is typical in a market like the Spanish one, traditionally characterized by highly concentrated shareholdings in most of its listed companies, public takeover bids aimed at gaining a controlling interest are usually launched as voluntary public takeover bids, which provide more flexibility to bidders, and are not preceded by the acquisition of a controlling interest. It is therefore common to see agreements, such as irrevocable undertakings, being formalized between the bidder and significant selling shareholders of the target company to secure the success of the voluntary public takeover bid.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Spanish law relating to public takeover bids can be found in:

- the consolidated text of the Securities Market Act ("**SMA**"), passed by the Spanish Law 6/2023 of 17 March 2023; and
- the Spanish Royal Decree 1066/2007 of 27 July 2007 on takeover bid procedures ("**RD 1066/2007**") by virtue of which the Takeover Directive (as defined below) was implemented into Spanish Law.

The above mentioned legislation is applicable to any takeover bid concerning (i) shares of a listed company, i.e. of any company whose shares have been totally or partially admitted to trading on the Spanish equity regulated market (the Spanish stock exchanges) and, since the approval of the SMA in 2023, on Multilateral Trading Facilities (*Sistemas Multilaterales de Negociación*) such as the BME Growth segment of BME MTF Equity or Portfolio Stock Exchange; or (ii) any other securities that entitle their holders to subscribe for or acquire such shares of a listed company, regardless of whether they are structured as mandatory or voluntary takeover bids. However, the SMA sets forth that the rules and principles relating to takeover bids in Multilateral Trading Facilities shall be developed by way of Royal Decree and it is therefore widely accepted that the rules of takeover bids shall not be applicable to companies trading on Multilateral Trading Facilities until such Royal Decree enters into force. For further information, see 9 below.

There are also specific rules applicable to takeover bids for listed companies that do not have their registered address in Spain and whose shares are not admitted to trading in the Member State where the company has its registered address.

The main body of the Spanish takeover bid legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Spain, there are a number of additional rules and principles that may need to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules) set forth, mainly, in Spanish Royal Decree 1362/2007 of 19 October 2007, on transparency requirements of listed companies ("**RD 1362/2007**"). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

(b) The rules relating to insider dealing and market manipulation (the so-called market abuse rules), set forth, chiefly, in Regulation (EU) 596/2014, of the European Parliament and of the Council of 16 April 2014, on market abuse ("**Market Abuse Regulation**") which repeals Directives 2003/6/EC of 28 January 2003, Directive 2003/124/EC, Directive 2003/125/EC and Directive 2004/72/EC. For further information, see 3.3 and 3.5 below.

(c) The general corporate regulation contained in the Spanish Companies Act ("**SCA**"), set forth in the consolidated text approved by Royal Legal Decree 1/2010 of 2 July 2010, which includes a specific section and regulation for listed companies.

(d) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

(e) The rules and regulations regarding foreign investment restrictions further described in 2.4 below.

2.3 Supervision and enforcement by the CNMV

Public takeover bids are subject to the supervision and control of the CNMV.

The CNMV has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines.

The CNMV also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

2.4 Foreign investments

Spanish foreign direct investment measures before the COVID-19 outbreak included a post-investment notification for any foreign investment, and prior authorization for a number of limited investments, such as investments from countries considered tax havens, activities related to national defense and security, and (for non-EU investors only) investments in gambling, airlines and audiovisual media, among other sectors.

In response to COVID-19, and in order to avoid opportunistic investments in critical sectors for national public security and health, the Spanish government enacted a number of amendments to Law 19/2003, which created a new screening mechanism for certain foreign direct investments. This screening mechanism was subsequently supplemented in 2023 by the enactment of Royal Decree 571/2023 of 4 July 2023 to further develop the foreign investment screening mechanism.

Foreign direct investment is defined as an investment as a result of which a non-EU/non-EFTA resident directly or indirectly acquires 10% of the share capital of a Spanish company (listed or unlisted) and/or any other corporate or legal transaction or business action by means of which a foreign investor acquires control of a Spanish company, or over all or part of it – "control" meaning the ability to exercise decisive influence over the relevant company as per EU Merger Regulation criteria.

The closing of any foreign direct investment transaction subject to the screening mechanism requires prior administrative authorization from the Spanish Council of Ministers. If the value of the investment in Spain is below €5 million, the Directorate General on International Trade and Investments will grant the authorization. The statutory term to issue the decision is three months, although such term may be suspended if the authorities issue requests for additional information, and the transaction shall not be completed until receiving a decision from the competent authority.

The screening mechanism is limited to sectors that affect public order, national security and public health, namely the following:

- Critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, sensitive facilities, and land and real estate crucial for using such infrastructure.
- Critical and dual-use technologies, including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.
- Key technologies for industrial leadership and training, including advanced materials and nanotechnology, photonics, microelectronics and nanoelectronics, life science technologies, advanced manufacturing systems and transformation, artificial intelligence, digital security and connectivity.
- Technologies developed pursuant to projects or programs of particular interest to Spain, which include those that have received a significant amount or proportion of public financial support from the EU or from Spain.
- Supply of critical inputs, in particular (a) those supplied by companies developing and modifying software used to operate critical infrastructure in the energy, water, telecommunications, financial and insurance, health, transport and food safety sectors, as well as (b) other indispensable and irreplaceable critical inputs to ensure the integrity, safety or continuity of activities that may impact the aforementioned sectors, among others.
- Sectors with access to or control of sensitive information, including personal data, specific data on critical infrastructure, databases related to the supply of essential services or that may not be publicly accessed and those sectors that carry out activities requiring data protection impact assessment.

- Media.

In addition, and only for non-EU/EFTA investors, the investment will be subject to control, even if the target is not active in any of the strategic sectors above, if any of the following conditions is met:

- Investors that a non-EU/EFTA government, directly or indirectly, controls, including state bodies, armed forces or sovereign wealth funds; the ability to exercise decisive influence as a result of an agreement, by owning shares or an interest in another person/entity (directly or indirectly) or by providing significant funding, is deemed to constitute "control" for these purposes.
- Non-EU/EFTA investors that have already made an investment affecting national security, public order or public health in another EU member state.
- A serious risk that the Non-EU/EFTA investors engage in illegal or criminal activities affecting national security, public order or public health in Spain.

At least until 31 December 2026, EU and EFTA resident investors are also subject to these restrictions if they make investments through which they acquire more than 10% of the capital and/or control of a Spanish listed company or of a Spanish unlisted company if the investment exceeds €500 million.

2.5 General principles

The following general principles apply to public takeover bids in Spain, based on the Takeover Directive:

(a) all holders of the securities of a target company whose circumstances are equal must be afforded equal treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company´s places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the target company, the bidder company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) a bidder must only announce a bid after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2.6 Basic features of a public takeover bid

The following are the main features of the public takeover bid regime governed by RD 1066/2007 which implements and develops the Takeover Directive in Spain:

- Mandatory takeover bids as a consequence of the prior acquisition of a controlling interest in the target company must be launched unconditionally, over all securities and at an equitable price.
- The threshold which determines the mandatory nature of a takeover bid is set at 30% of the voting rights of the target company (thus excluding any treasury or self-owned shares from the calculation). In addition, the obligation to launch a takeover bid would also arise if the bidder acquired less than 30% of the voting rights but appoints a majority of the members of the company's board of directors.
- The establishment of various types of takeover bids, each with different requirements and features, including mandatory takeover bids (which are defined according to how the controlling interest is obtained and can be in the form of ordinary takeover bids, indirect takeover bids or incidental takeover bids), delisting takeover bids, voluntary takeover bids, and takeover bids for the acquisition of treasury stock for redemption.
- The "equitable price" rule is applicable to mandatory takeover bids, based on the highest price paid or agreed upon in the 12 months immediately prior to the announcement of the takeover bid. This is deemed to be the reference period. However, alternative criteria are established in cases where no share purchases or agreements to purchase occurred during the reference period, whereby the price is determined on the basis of objective valuation measures. In addition, the CNMV is entitled to modify the equitable price in certain specific and predefined situations.
- A more flexible procedure is established for voluntary takeover bids, which may be total or partial, are not subject to the equitable price requirement and allow the establishment of conditions precedent.
- The decision or obligation to launch a takeover bid must be announced immediately, provided that the capacity to pay the full amount of the consideration for the takeover bid has been confirmed.
- The takeover bid must always be previously authorized by the CNMV, which must also approve the relevant information memorandum (*folleto*).
- The target company's board of directors is under a duty to remain passive but is also entitled to take defensive measures, provided such measures are previously authorized at a general shareholders' meeting.
- Companies are entitled, at their option, to establish a breakthrough regime with regard to anti-takeover bid clauses provided for in their by-laws or in shareholders' agreements, without prejudice to the application of certain imperative breakthrough measures in the event that, after a takeover bid, the bidder obtains voting rights of at least 70% of the target company's share capital.
- A detailed regime for competing takeover bids is established, which allows break-up fees to be negotiated by the initial bidder and the target company for an amount up to 1% of the total takeover bid amount, and including the so-called "principle of equal information" with regard to any information that is provided by the target company to the different bidders.
- A procedure for squeeze-outs and sell-outs is also provided for, linked to the simultaneous obtainment of a 90% controlling interest in the target company as a result of a takeover bid and a minimum 90% acceptance level of the takeover bid.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Spanish listed company. Unless otherwise stated, the relevant percentages needed to exercise the relevant rights may be reached by the shareholders individually or jointly with other shareholders.

Shareholding	Rights
One share	In general, and amongst others: • The right to participate in the company's profit and to receive a dividend on a pro-rata basis to its stake in the company. • A pre-emptive right to subscribe new shares in the issuance of new shares or convertible bonds, on a pro-rata basis to its stake in the company. • The right to attend, participate and vote at general shareholders' meetings. However, the by-laws of the company may require the holding of a minimum number of shares in order to attend the meeting (never greater than 1,000 shares though) and a limitation to the maximum number of votes a shareholder may be entitled to cast. • The right to obtain information and clarification relating to the matters included in the agenda of an upcoming shareholders' meeting. However, the directors may refuse to give such information in case they consider the information may be used for purposes unconnected with the company or its disclosure may pose a threat to the company, unless the information is requested by shareholders representing at least 25% of the company´s share capital, in which case the directors may not refuse its disclosure. • The right to submit questions to the directors at general shareholders' meetings (either orally at the meeting, or in writing prior to the meeting). • The right to request the convening of a shareholders' meeting in order to decide upon the dissolution of the company if, due to the losses incurred, the net assets become lower than half the share capital, unless the company is bound to file for insolvency. If the directors do not convene such meeting, any shareholder or third party with a legitimate interest (including creditors) may request the dissolution at the courts of justice. • The right to request the appointment of an auditor from the Commercial Registry, in case the shareholders´ meeting does not appoint it, or if the appointed auditor does not accept its nomination or cannot carry out its functions.

Shareholding	Rights
	- The right to bring legal proceedings against the directors (*acción individual de reponsabilidad*) if their managerial actions have caused direct damage to the interests of the shareholders. - The right to cumulative voting for the appointment of members of the board of directors, as the SCA expressly recognizes the shareholders' general right to designate a proportional number of directors of the board depending on the share capital owned by them, including a specific procedure to put this general right into effect with the sole vote of the relevant shareholders (i.e. proportional representation right). This proportional representation procedure may only be exercised when a vacancy in the board of directors is yet to be covered.
1‰ (one per mille)	- The right to challenge the resolutions of the general shareholders' meetings or the board of directors.
1%	- The right to request the attendance of a Notary Public at shareholders' meetings. - The right to request, from the relevant court of justice, the adoption of an interim measure (medida cautelar) whereby the decision of the shareholders' meeting or the board of directors which is being challenged is temporarily suspended.
3%	- The right to request the board of directors to convene a general shareholders' meeting. - The right to include additional items on the agenda of a general shareholders' meeting and alternative draft resolutions for items on the agenda. - The right to file a minority claim against the directors on behalf of the company (*acción social de responsabilidad*) if their managerial actions have caused damage to the company's interests when (i) the shareholders have requested the directors to call a general shareholders' meeting to agree on the filing of the suit and the directors did not call the meeting; (ii) the company does not file suit within one month from the general shareholders' meeting agreeing to do so; or (iii) the general shareholders' meeting does not agree to file a suit. In addition, the shareholders representing 3% of the share capital are also entitled to file claims directly (without the need of having the general shareholders' meeting passing a resolution on that regard) against the directors for any breach of their duty of loyalty. - The right to object to the waiver or settlement of the corporate claim for directors' liability (*acción social de responsabilidad*). - The right to obtain certain personal data concerning the rest of the shareholders, including their respective addresses and contact

Shareholding	Rights
	details, exclusively for the purpose of contacting them in order to exercise their rights and to better protect their common interests. • The right to request the Commercial Registry to appoint an independent expert in order to valuate any in rem, i.e., non-monetary, assets contributed to the company, with certain exceptions.
Quorum and voting majorities	In accordance with the SCA, a general shareholders' meeting is validly convened, in the first call, when shareholders account for at least 25% of the capital with voting rights. In the second call, the general shareholders' meeting is validly convened regardless of the capital represented at the meeting. Resolutions at a general shareholders' meeting are passed by simple majority, i.e., more yes- votes than no-votes, of the capital represented at the meeting. However, the following matters are subject to legal enhanced quorum and majority voting requirements: • the increase or decrease of the company´s share capital, or any other amendment of the company's by-laws; • the issuance of bonds; • the suppression or limitation of the pre-emptive right of shareholders in the context of the issuance of new shares or convertible bonds; and • the transformation, merger, spin-off, global transfer of assets and liabilities, and the change of corporate address to a foreign jurisdiction. For the approval of these matters, the SCA requires a quorum of shareholders that account for at least 50%, in the first call, and 25% in the second call. Additionally, these particular resolutions have to be passed by absolute majority, i.e., more than half of the votes, except in the second call, where if capital present or represented accounts for less than 50% of the share capital, it will be necessary to have the favorable vote of two-thirds of the capital present or represented at the meeting. The by-laws of the company may enhance the legal quorum and majority voting requirements. Additionally, regarding the appointment of directors, shares that are voluntarily pooled so that they constitute an amount of capital greater than or equal to that which results from dividing total capital by the number of members of the board, will have the right to appoint those that, exceeding whole fractions, result from the corresponding proportion.

3.2 Restrictions and careful planning

Public takeover bids are complex transactions that require very careful planning and coordination. Therefore, it is key to involve sophisticated external advisers from the very early stages of the process particularly on the legal, financial and communication fronts. Spanish law and the Market Abuse Regulation contain a number of rules that are applicable before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior "stake building" by a bidder, the preparation process and announcements of the takeover bids. The main restrictions and hurdles have been summarized below.

3.3 Inside information and market abuse / "Stake-building"

In general, before, during and after a takeover bid, rules regarding inside information and market abuse remain applicable. Nevertheless, there are certain rules regarding insider dealing which shall be specifically taken into account in relation to takeover bids or which are expressly aimed at these.

In accordance with the Market Abuse Regulation, the mere fact that a person uses their own knowledge to acquire or dispose of financial instruments in the acquisition or disposal of those financial instruments shall not of itself constitute use of inside information for the purpose of the prohibitions regarding insider dealing and unlawful disclosure of inside information.

In particular, the Market Abuse Regulation specifically provides that the mere fact of a potential bidder having access to inside information relating to a target company and using it in the context of a public takeover bid should not be deemed to constitute insider dealing, provided that, at the point of acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to constitute inside information (usually referred as 'cleansing'). This exception does not apply to "stake-building", i.e., to the previous acquisition of securities in the target company below the threshold that triggers a mandatory takeover bid.

With regard to a potential "stake-building", the following consequences that the previous acquisition of securities in the target company may have on the design and structure of the relevant takeover bid must be taken into consideration:

(a) the highest price paid in such acquisitions may constitute the minimum price for a mandatory public takeover bid or for a voluntary public takeover bid that is launched at equitable price. See 3.4 and 3.9(f) below.

(b) The higher number of shares held by the bidder before the launch of a public takeover bid the more difficult it would be in theory to reach the thresholds required for (i) the exception to launch a mandatory public takeover based on the acceptance of a prior voluntary public takeover bid (see 3.9.(f) below); and (ii) the squeeze out right (see 7 below).

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure thresholds in Spain are 3%, 5%, 10%, 15%, 20%, 25%, 30% (which triggers the obligation to launch a mandatory takeover bid), 35%, 40%, 45%, 50%, 60%, 70%, 75%, 80% and 90%.

When determining whether or not a threshold has been reached, a potential bidder must also take into account certain other voting rights or percentages, as they will be attributed to the bidder (see 3.8(b) below).

Furthermore, from the public announcement of a takeover bid until its settlement or withdrawal, the following requirements shall apply:

(a) the bidder shall communicate to the market, by means of a regulatory disclosure (*otra información relevante*), any acquisition of shares of the target company, as well as the prices paid or agreed thereupon; and

(b) other shareholders shall inform the CNMV if they reach or exceed 1% of the voting rights of the target company. Those shareholders that already have a stake of over 3% in the target company shall inform the CNMV about any transaction in the company's shares. The CNMV shall disclose such information immediately.

3.5 Inside information, preparation process and intermediate steps

The preparation of a takeover bid normally includes various intermediate steps until the final decision to launch the takeover bid and its definite terms and conditions are decided. In fact, in the Spanish market, takeover bids are usually preceded by certain negotiations and dealings with the shareholders and the target company itself. During this preparation process, the requirements related to inside information must be borne in mind.

Under the Market Abuse Regulation, certain 'precise information' may be inside information. During the preparatory period before a takeover bid is launched there may be events or circumstances that may be deemed to be precise and, therefore, constitute inside information.

The target company, as the issuer, is subject to the general obligation to publicly disclose any inside information as soon as possible. However, it may delay such public disclosure provided that (i) immediate disclosure is likely to prejudice its legitimate interest; (ii) the delay of the disclosure is not likely to mislead the public[7]; and (iii) the issuer is able to ensure the confidentiality of that information.

3.6 Information leakages, early disclosures, and Put-up or shut-up

The bidder shall be obliged to immediately announce the takeover bid once the decision has been adopted or made public, or whenever the obligation to launch the bid arises, but only after ensuring it can fulfil any consideration resulting from the takeover bid in full. Therefore, Spanish takeover bid regulation does not contemplate an early disclosure obligation, and in particular, the put-up-or-shut-up rule is not provided for under Spanish regulation.

Nevertheless, and without prejudice to the general obligation of the issuer regarding premature, partial or distorted disclosure (see 3.5 above), in those cases where there has been a leak to the market about a potential takeover bid, the CNMV normally requires that the target company or the bidder issues an "inside information release" (*comunicación de información privilegiada*) which clearly and precisely indicates the status of the transaction under way or contains a preview of the information to be provided.

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[7] Pursuant to Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises, this requisite shall be replaced as from 5 June 2026 by "*the inside information that the issuer or emission allowance market participant intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers*".

3.7 Due diligence

The Spanish public takeover bid rules do not contain specific rules regarding the question of whether a prior due diligence review of the target company can be organized, nor how such due diligence is to be organized. However, RD 1066/2007 lays down the principle of "equal amount of information for all competing bidders", i.e., all existing or potential bidders shall have access to the same amount of information or, at least, shall have the opportunity to have access to the same information.

Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted in the market and by the CNMV as well. Appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms in accordance with the provisions mentioned in 3.5 above. See 3.3 above in connection with the required "cleansing" of the potential inside information that a bidder may have access to in the context of the due diligence review of a target company.

Prior to conducting a due diligence review, it is market practice for the target company and the future bidder to enter into a confidentiality agreement whereby the recipient of the information undertakes not to use the information made available by the target company for any purpose other than launching the takeover bid.

3.8 The acquisition of a controlling interest as the backbone of the Spanish public takeover bid regime

(a) The concept of control

The obligation to launch a mandatory public takeover bid is set forth in RD 1066/2007 as a consequence of having acquired a controlling interest in a given listed company. Such controlling interest would be deemed to have been acquired in either of the following situations:

(i) when ownership directly or indirectly reaches or exceeds 30% of the voting rights of the target company, i.e., excluding the shares that the target company directly or indirectly keeps as treasury shares and any other shares without voting rights; or

(ii) when a percentage of voting rights lower than 30% is acquired and a given number of directors is appointed which, in addition to those already appointed by the bidder, if any, exceeds half the number of board members of the target company within 24 months of said acquisition. RD 1066/2007 establishes a series of conditions that must be met in order to consider that such board members were appointed by the owner of the relevant stake.

Under Spanish law there is an acquisition of a controlling interest that triggers the obligation to launch a mandatory takeover bid if a person acquires "effective control". In relation to this:

(i) an exemption from the obligation to launch a takeover bid may be permitted provided there is another shareholder that, individually or jointly with others, holds a percentage of voting rights that is greater than or equal to the stake in question. Said exemption must be expressly granted by the CNMV and requires both that the other shareholder referred to above does not subsequently lower its stake to an amount that is less than the one that is exempted from the takeover bid obligation, and that the exempted shareholder does not appoint more than half the members of the target company's board of directors;

(ii) the acquisition of a controlling interest is linked to the ownership of shares or securities that confer voting rights in the target company, but not to the ownership of those securities or instruments that entitle their holders to an eventual redemption, subscription or acquisition of the underlying shares. Those situations will only involve the obligation to launch a takeover bid when said redemption, subscription or acquisition takes place. Consequently, the signing of call option agreements or so-called "irrevocable undertakings" (which are customary in the context of the actions carried out prior to or in preparation of the bid) will not trigger a mandatory takeover bid and will enable the relevant bidder to launch the takeover bid under the more flexible regime provided for voluntary takeover bids.

(b) Ways of acquiring a controlling interest and action in concert

For the purposes of determining the obligation to launch a public takeover bid, the acquisition of a controlling interest in a listed company may take place by means of any of the following procedures:

(i) by acquiring shares or other securities that directly or indirectly confer voting rights in the target company;

(ii) by entering into agreements to act in concert with other holders of securities in order to obtain a controlling stake in the target company; or

(iii) as a result of an indirect or incidental acquisition of a controlling interest (see 4.1(c) below).

For the purpose of the Spanish takeover bid rules, persons "act in concert" if they collaborate with any other person on the basis of an express or tacit, oral or written, agreement aimed at acquiring the control over the target company. There is a legal presumption of the existence of such acting in concert in cases where the relevant parties enter into a shareholders' agreement with the aim of establishing a common policy with respect to the management of the company or to significantly influence such management, or that, with the same objective, regulates voting rights on the board of directors or the executive committee of the company.

(c) Calculation of voting rights

For the purposes of calculating the number of voting rights to obtain a controlling interest, one must take into account both the ownership of shares with voting rights attributed and the voting rights held by means of usufruct, pledge or otherwise.

In addition, the percentage of voting rights held by the following persons or entities shall be attributed to the bidder:

- the voting rights held by any other company pertaining to its group of companies and, unless proven otherwise, their board members;
- the voting rights held by the parties that act in their own name but with which the bidder acts in concert or may be deemed to act in concert;
- the voting rights that the bidder can exercise freely and on a permanent basis pursuant to the relevant powers granted to the bidder by the owners of the shares, in the absence of specific voting instructions; and
- the voting rights attributed to shares held by nominees that act in their own name but on behalf of the bidder, i.e., by those people to whom the bidder

has wholly or partially spared from the risks inherent to acquiring, possessing or transferring such shares.

3.9 Exceptions to the obligation to launch a public takeover bid

RD 1066/2007 establishes several exceptions to the need to launch a takeover bid when the acquisition of the controlling interest in a listed company has taken place as a result of any of the following situations:

(a) acquisitions or other transactions performed by guaranteed funds or other similar institutions subject to the rules of publication and competition established in their specific regulations;

(b) acquisitions or other transactions performed according to the Spanish Mandatory Expropriation Act (*Ley de Expropiación Forzosa*), and any other transactions that may arise from competent authorities exercising their legally established powers under public law;

(c) transfers or swaps of securities that are unanimously approved by all the relevant company's security holders and which provide for the delisting of such securities;

(d) acquisitions or other transactions that arise from the conversion or capitalization of credits in companies whose financial viability is in serious or imminent danger (even when the companies are not undergoing insolvency proceedings) and when said acquisitions or transactions are aimed at guaranteeing the long-term financial recovery of the relevant company. In such cases, the CNMV would be entitled to waive the obligation to launch the takeover bid; however, no waiver from the CNMV would be necessary where the transaction refers to refinancing agreements approved by a court of justice and which have obtained a favorable report by an independent expert pursuant to the provisions of the Spanish Bankruptcy Act (*Ley Concursal*);

(e) acquisitions made in contemplation of death (*mortis causa*) and free acquisitions between living persons provided that, in relation to the latter, the acquirer has neither acquired shares during the 12 months immediately prior nor entered into an agreement or concert with the transferor thereto;

(f) when the controlling interest is obtained pursuant to a voluntary takeover bid for all the securities of the target company, provided said bid (i) was launched at an equitable price (see 4.3 below); or (ii) was accepted by at least 50% of the security holders (excluding securities held by shareholders that had reached some agreement with the bidder in relation to the bid); and

(g) when the controlling interest is obtained within the context of a merger transaction affecting the target company, provided that (i) the parties that are obliged to launch the takeover bid did not vote in favor of the merger at the relevant general shareholders' meeting of the target company; and (ii) it can be proven that the main objective of the takeover was not to obtain a controlling interest but rather to meet some commercial or business goal. In any event, the CNMV would have to issue the relevant exemption from the obligation to launch the bid.

4. Effecting a Takeover

4.1 Types of public takeover bids in Spain

(a) Mandatory takeover bids

This category includes all the different types of mandatory takeover bids deriving from a voluntary act by the bidder aimed at obtaining a controlling interest in the relevant target company by any of the following means:

- the acquisition of shares or other securities conferring voting rights on their holders which causes the bidder to obtain a stake equal to or greater than 30% of the target company's voting rights;
- the acquisition of a stake below 30% together with the appointment, within the next 24 months, of a number of members on the target company's board of directors that, together with any directors previously appointed by the bidder, represent a majority of the members on said board; or
- the signing of shareholder agreements with other holders of securities which results in any of the aforesaid situations.

In all such cases, the takeover bid must be carried out as a total takeover (see 4.2 below) and at an equitable price (see 4.3 below). It must also be structured as an irrevocable and unconditional bid subject to no conditions, with the exception of any prior authorizations that may need to be obtained from competition authorities, foreign investment authorities or other administrative authorities.

(b) Indirect mandatory takeover bids

The obligation to launch an indirect mandatory takeover bid arises when the bidder acquires an indirect controlling interest in the target company as a result of a merger or takeover of a third company or entity with a direct or indirect holding in the target company.

The same procedure as the one mentioned for ordinary mandatory takeover bids is applicable here. However, the mandatory launch of the bid can be avoided if the share capital in excess of the relevant threshold is disposed of within three months of acquiring the controlling interest, provided the voting rights inherent to such share capital in excess are not exercised in that timeframe.

(c) Incidental mandatory takeover bids

An incidental mandatory takeover bid (*OPA obligatoria sobrevenida*) is one that must be carried out whenever a controlling interest in a target company is acquired in an "incidental" manner, that is to say as a result of any of the following events:

- a decrease on the share capital of the target company;
- an exchange, subscription, conversion or acquisition of shares derived from securities or other instruments conferring such rights;
- an increase on the interest held derived from a rise in the target company's treasury stock; or
- an acquisition of shares resulting from underwriting agreements or an initial public offering.

Similar to indirect takeover bids, an incidental takeover bid must observe the compulsory and irrevocable procedure established for mandatory takeover bids, unless the share capital in excess (or the excess in treasury stock giving rise to the incidental takeover bid) is disposed of within three months, and provided the voting rights inherent to such share capital in excess are not exercised in that timeframe.

(d) Voluntary takeover bids

A voluntary takeover bid can be launched at the discretion of the bidder, provided said bidder is not under the obligation to launch a mandatory takeover bid, either because the bidder (i) has not previously acquired a controlling interest requiring a mandatory takeover bid; or (ii) already controls the target company and may therefore freely increase its holding without being subject to the rules governing mandatory takeover bids.

The legal regime governing voluntary takeover bids is more flexible and includes the following features:

- Partial takeover bids. Unlike mandatory takeover bids, voluntary ones may be partial, provided that: (i) the bidder does not acquire a controlling interest as a result of the bid; or (ii) the bidder already holds a controlling interest in the company and can therefore increase its interest without having to launch a mandatory takeover bid.
- Freedom to determine price. Voluntary takeover bids are not subject to a minimum equitable price requirement and can therefore be made at the price determined by the bidder.
- Voluntary takeover bid conditions and withdrawal of bids. Voluntary takeover bids may be conditioned by the bidder to a range of requirements, including the passing of certain resolutions at the general shareholders' meeting of the target company, the acceptance of the bid by a particular number of securities and, in general, any other condition deemed valid by the CNMV. With regard to the withdrawal of a bid, the regulations applicable to voluntary takeover bids are much more flexible than those governing mandatory ones.
- The acquisition of a controlling interest resulting from a voluntary takeover bid would not require the bidder to launch a subsequent mandatory bid in any of the following scenarios: (i) the voluntary takeover bid was launched at an equitable price; or (ii) the voluntary bid was accepted by at least 50% of the shares to which it was addressed, not including those already owned by the bidder and/or shareholders that had reached an agreement with the bidder in relation to the bid.

(e) Takeover bids resulting from the acquisition of treasury stock for redemption

RD 1066/2007 establishes that the takeover bid regime and procedures shall apply to capital decreases executed by listed companies by means of the acquisition of treasury stock for its redemption. It also establishes an exception to the rule when the treasury stock purchased does not exceed 10% of the share capital and is based on European Regulation 2273/2003 (current Commission Delegated Regulation (EU) 2016/1052) governing share buyback programs and stabilization of financial instruments.

(f) Delisting takeover bids

RD 1066/2007 sets forth specific regulations and requirements for those takeover bids that ought to be launched in case of a delisting. For further information, see 8 below.

4.2 Scope of the public takeover bid

As a general rule, the takeover bid must be addressed to:

(a) all the shareholders of the target company, including those without voting rights who, upon authorization of the takeover bid, held voting rights according to the provisions of the applicable regulation; and

(b) any person or entity that holds either preferential acquisition rights over the shares, or convertible or exchangeable bonds, if any.

In addition, voluntarily and at the discretion of the bidder, the takeover bid may also be extended to all owners of warrants or other securities that confer their holders the option to acquire or subscribe shares, i.e., atypical securities, different from the convertible or exchangeable bonds mentioned in (b) above.

In practice, and even though RD 1066/2007 only regulates it in regards to delisting takeover bids, it is not necessary to extend the bid to the owners of securities that have undertaken not to accept the bid and who have blocked their shares until the liquidation of the bid is concluded, thus enabling a limit on the scope of the takeover bid and lower guarantee-related costs in relation to the bid.

4.3 Equitable price and takeover bid consideration

(a) General procedure

Unlike voluntary takeover bids, mandatory takeover bids must be launched at a price not lower than the so-called equitable price, as defined in RD 1066/2007, which essentially follows the concept established in the Takeover Directive. The definition of equitable price in accordance with RD 1066/2007 is:

(i) the highest price or consideration paid or agreed upon by the bidder or any person acting in concert with the bidder in regards to the same type of securities during the reference period, which is understood as the 12 months immediately prior to the takeover bid announcement; or

(ii) if no acquisition or agreement to acquire took place in the reference period, the equitable price may not be lower than the one obtained by applying the rules for calculation and objective settling established in regards to delisting takeover bids (see 4.1.f) above).

In any case, one must bear in mind that the term 'equitable price' is a legal concept that does not necessarily coincide with that of 'fair value'. It is intended to ensure that the principle of equal treatment to all the target company's shareholders is applied and, particularly, to ensure an equitable distribution of the control premium.

(b) Total amount and amendment of equitable price

For the purpose of determining the equitable price, the total amount of the consideration or price paid or offered by the bidder must be taken into account, and special rules are established in case of acquisitions resulting from the execution of options or other financial instruments, situations of swapping or the redemption of shares, and agreements that include additional compensation or deferral of payment.

In addition, and according to the provisions of the Takeover Directive, the determination of an equitable price according to the aforementioned criteria and, particularly, according to the rules regarding the highest price paid or agreed, is established in RD 1066/2007 for those situations in which the acquisition or the agreement to acquire may have taken place under normal or ordinary market circumstances, thereby establishing various situations where the equitable price can be modified by the CNMV. Said situations are the following:

(i) Objective corrections and modifications of the equitable price.

In cases where the equitable price must be objectively corrected, typically to maintain a financial equivalency, or when it may be substituted by an alternative and predetermined price, including the following cases:

- when the traded price for the securities may have been affected in the reference period by dividends, corporate transactions or extraordinary events that would allow the equitable price to be objectively corrected;
- when the equitable price is lower than the range of quotation prices for the day of acquisition that determines said price, in which case the price may not be less than the lowest price in said range; and
- when the equitable price refers to a non-significant acquisition in relative terms and provided such acquisition was carried out at the quotation price, in which case the price would be the highest amount paid or agreed upon in the remaining acquisitions carried out in the reference period.

(ii) Amendments to increase or decrease the equitable price.

This refers to situations where the equitable price is modified in accordance with objective appraisal criteria and on the basis of the relevant appraisal report issued by an independent expert. Such situations include:

- when the quotation price has been affected in the period of reference by events that point to market abuse manipulation, which may have caused the CNMV to initiate disciplinary proceedings. In such cases, the price would be determined according to objective appraisal criteria, which would have to include the consideration paid by the bidder in the reference period; and
- when the target company can be proven to be undergoing serious financial difficulties, in which case the equitable price would be determined according to the objective appraisal criteria for delisting takeover bids (see 4.1(f) above).

(iii) Amendments to increase the equitable price, as established in the SMA.

The SMA contemplates various situations where the equitable price may be modified pursuant to different extraordinary events that may have occurred in the 2-year lapse preceding the takeover bid, extending the procedure not only to mandatory takeover bids but also to voluntary ones which, if they fall under the situations mentioned, must necessarily be carried out using a price that is calculated according to the rules indicated below. Said situations are the following:

- when the quotation prices for the shares point to there being reasonable proof that market abuse manipulation has occurred, which would be cause for the CNMV to initiate penalty proceedings;

- when market prices in general, or the price of the target company in particular, have been affected by extraordinary events, such as natural disasters, wars, calamities or other events caused by force majeure; and

- when the target company is subject to expropriation, confiscations or other circumstances of a similar nature which could imply a change in its real net worth.

  These cases always imply an increase of the equitable price so that the takeover bid price cannot be less than the highest price of either the price calculated according to the aforementioned general criteria for establishing equitable prices, or the price calculated according to objective appraisal criteria (including therein, the consideration paid by the bidder in the reference period).

(c) Consideration

With regard to the consideration offered, takeover bids may be structured as a purchase deal (cash), a swap or exchange deal (securities) or a combination of both. However, certain cases will require the consideration to be paid in cash, or that said consideration is included as an alternative to the option granted to the shareholders of the target company, for an amount that represents the financial equivalent of the exchange offered.

5. Timeline

5.1 Typical takeover bid timeline

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to other kinds of takeover bids, with certain exceptions. The following sections include (i) a description of the main milestones of a customary takeover bid process in Spain; and (ii) a chart that summarizes such milestones in an indicative timeline.

5.2 Announcement of the public takeover bid. Target and bidder restrictions

A bidder that intends, or is compelled, to launch a public takeover bid must immediately inform both the market and the CNMV of such situation:

(a) in the case of a voluntary takeover bid, as soon as the bidder takes the decision to launch the bid, but only after ensuring it can fulfil any consideration thereof in full. The bidder is not obliged to prove such requirement at such time, but as the takeover bid becomes irrevocable upon the public announcement, the bidder should ensure it has the capability to cover the maximum takeover bid consideration, including funding confirmation from the relevant financial entity; or

(b) in the case of a mandatory takeover bid, whenever the acquisition of a controlling stake in the target company is reached, irrespective of whether such control is direct, indirect or incidental. In these latter cases, the bidder shall disclose whether or not it intends to launch the public takeover bid, request an exemption from the CNMV or dispose of the shares in excess of the relevant threshold that triggered the need to launch the bid.

In any event, the announcement will need to conform to a regulated template established by the CNMV.

The announcement has several effects, including the commencement of the duty to remain passive on the part of the target company (see 6.2 below). Additionally, upon public announcement of the takeover bid and, thus, its irrevocability, the bidder itself and those parties acting in concert with the bidder will be subject to certain restrictions contemplated in RD 1066/2007, including the following:

(a) the prohibition from disclosing or publishing any information not included in the bid announcement;

(b) in the case of a mandatory takeover bid, and until the bid is authorized by the CNMV, the prohibition from exercising the voting rights inherent to the share capital in excess of the relevant threshold which triggers the need to launch the bid;

(c) the obligation to inform the CNMV, on a daily basis, of the number of securities of the target company acquired in the framework of the takeover bid, together with the acquisition price thereof; and

(d) the prohibition from transferring any securities held in the target company until the final settlement of the takeover bid.

5.3 Filing and approval of a public takeover bid

Following the initial announcement of a public takeover bid, the bidder must file a request for authorization with the CNMV within one month from such initial announcement in case of voluntary or ordinary mandatory takeover bids, or within a maximum of three months in case of indirect or incidental mandatory takeover bids.

Similar to the announcement, the request for authorization will need to conform to a regulated template established by the CNMV.

The request for authorization shall also include (i) the relevant documentation certifying the relevant corporate resolution whereby the launch of the takeover bid is adopted; and (ii) the information memorandum (*folleto*), subject to the specific contents provided for in RD 1066/2007. All other documentation which is required to be filed by RD 1066/2007 (including, among other things, proof of the relevant guarantees and documentation certifying the price of the bid and valuation reports, where applicable) shall be filed with the CNMV within seven working days after the aforesaid request for authorization is filed.

The CNMV will examine the request for authorization, the information memorandum (*folleto*) and all supplementary documentation filed by the bidder and will ask for any further documentation it deems fit, and will either authorize or reject the public takeover bid within 20 working days of receipt of the last of these documents.

5.4 Publication, acceptance period and target company's board of directors' report

No later than five working days after receiving notification from the CNMV that the relevant authorization has been granted, a bidder shall publish the basic contents of its takeover bid in the relevant stock exchange listings bulletins (*boletines de cotización*) and in at least one national newspaper.

The takeover bid acceptance period starts on the fifth stock exchange working day following the date of publication of the first of the above mentioned announcements and shall remain open for between 15 and 70 calendar days.

In addition, and within 10 calendar days after the start of the acceptance period, the board of directors of the target company shall issue and publish a detailed report on the public takeover bid, stating its comments for and against the bid and expressly disclosing any agreement that may exist between the target company and the bidder or the directors or shareholders thereof, or between the latter and the board members of the target company in relation to the takeover bid.

5.5 Publication of the result, settlement and payment

The CNMV will announce the result of the takeover bid no later than seven working days after the acceptance period expires. If the takeover bid is successful, payment thereof must take place in the following manner:

- In case of in-cash payments, according to the procedure set by the Spanish Clearing and Settlement System (Iberclear). The date on which the transfer transaction is carried out from a stock market perspective would be deemed to be that on which the result of the bid is published in the relevant stock exchange listings bulletin.
- In case of in-kind payments (attribution or swap of shares), according to the procedure set out in the offer document filed by the bidder and authorized by the CNMV.

5.6 Amendment, withdrawal and invalidity of a public takeover bid

(a) Amendment of the takeover bid

A bid may be amended at any time prior to the fifth working day prior to the end of the acceptance period, provided the amendment is more beneficial for the persons to whom it is addressed. In the case of competing bids, specific relevant provisions apply.

(b) Withdrawal and cessation of the effects of a takeover bid

A public takeover bid is irrevocable as of its announcement and the bidder can only withdraw the bid in the specific cases set forth in RD 1066/2007. There are significantly different rules according to the type of bid at stake:

(i) Mandatory takeover bids - The bidder may only withdraw its bid in the following cases and would then need to reduce its controlling interest below 30% or terminate the relevant agreement that may have resulted in the controlling situation:

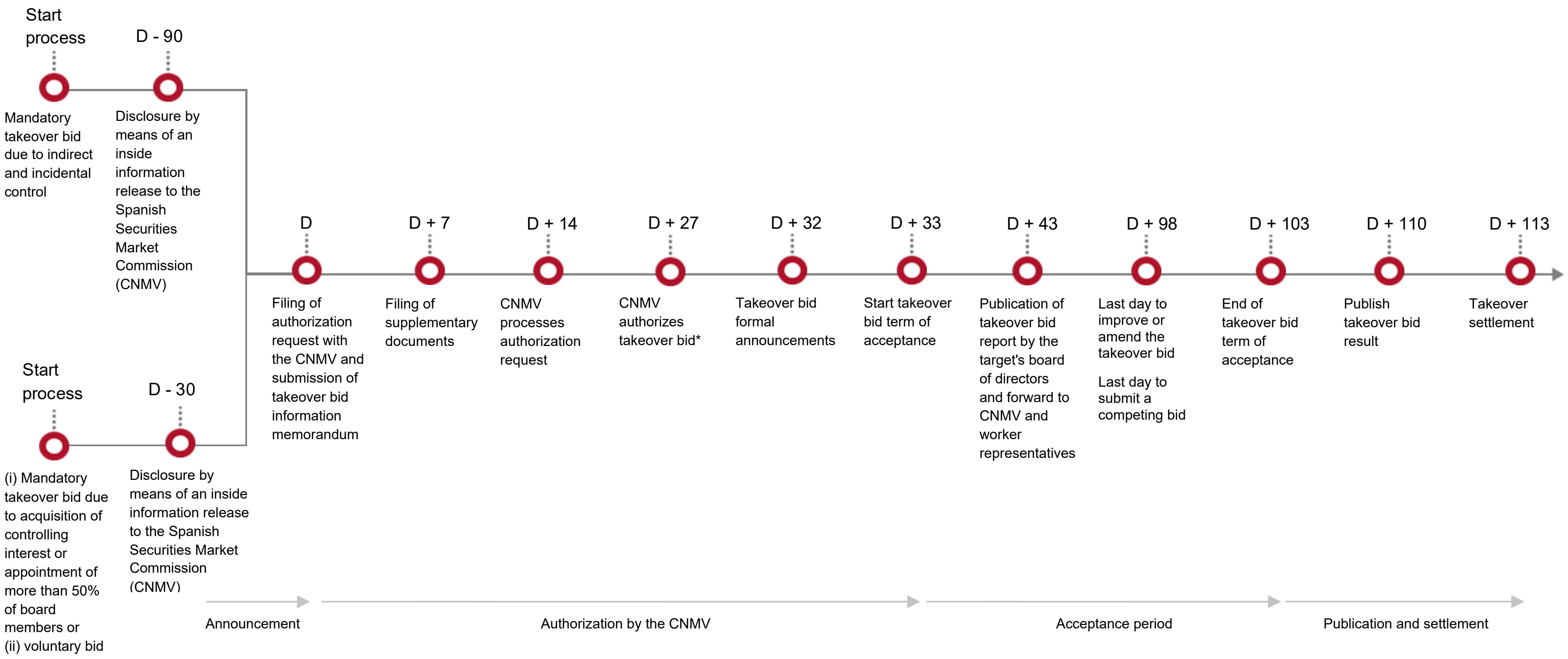
- when the bid has been conditioned on the approval by the competition authorities and, prior to the end of the acceptance period, said authorities declare the proposed transaction to be inadmissible or make it subject to any condition, or do not expressly or implicitly approve the transaction;
- when, for exceptional reasons beyond the control of the bidder, the takeover bid cannot be launched or becomes patently unviable, provided the prior approval of the CNMV is obtained; and
- when, upon conclusion of the procedure applicable to competing bids, an unconditioned competing bid exists which improves the initial mandatory takeover bid.

(ii) Voluntary takeover bids - Voluntary takeover bids cease to be effective when the conditions to which they may be subject are not fulfilled. In addition, a bidder may withdraw its bid in the same cases applicable to mandatory bids, as well as in the following cases:

- when a competing bid is approved; or
- when the target company adopts a defensive measure that prevents the bidder from maintaining its bid, provided the prior approval of the CNMV is obtained. If the defensive measure in question consists of the payment of an extraordinary dividend or other type of exceptional remuneration to the shareholders, a bidder may maintain its bid and reduce the consideration accordingly in order to maintain the equivalent price, subject to CNMV approval.

Set out below is an overview of the main steps for a takeover bid in Spain.

Takeover bid (indicative timeline)



* Although the legal deadline for the CNMV authorizing the takeover bid is 20 business days from the filing of the authorization request and any supplementary documents, such deadline is always extended due to the inherent complexity of the takeover bids and the need for detailed review by the CNMV (particularly regarding the price) and also because the CNMV does not customarily approve a takeover bid until all applicable antitrust, foreign investment and regulatory approvals have been obtained.

6. Takeover Tactics

6.1 Competing takeover bids

RD 1066/2007 establishes a specific regulation for competing takeover bids, the main features of which are set forth below:

(a) Filing period and prohibition of bids outside the timeframe

Competing takeover bids must be filed in the period commencing after the filing of the initial bid and ending on the fifth calendar day prior to the expiry of the acceptance period, including extensions and additional time. An extension will be granted in the event of a subsequent mandatory bid. In any case, the announcement of a new voluntary takeover bid after the filing period for competing bids has expired is expressly forbidden.

(b) Improving a preceding takeover bid

Competing takeover bids must be for at least the same number of securities as the last preceding bid and must improve the preceding bid, either by increasing the price or consideration offered, or by extending the takeover bid to a greater number of securities. Nevertheless, competing bids may be subject to conditions or even to acceptance of a greater number of securities than the preceding bid. Subsequently, improved bids are also possible at any time after approval of the last competing bid and prior to the date of presentation of closed envelopes.

(c) Acceptance period

The acceptance period is 30 calendar days following publication of the first announcement. The launch of a competing takeover bid interrupts the acceptance period for preceding bids, which are thereby automatically modified so that all takeover bids' acceptance periods expire at the same time. Acceptance of the various competing bids is expressly allowed, but the order of preference between them must be specified.

(d) Sealed envelope procedure and initial bidder preference

On the fifth working day following expiry of the period for the filing of competing bids, all bidders that have not withdrawn their bid shall proceed to submit a closed envelope to the CNMV including, as the case may be, their improved offer. Once the envelopes have been opened, only the initial bidder, provided it has not withdrawn its bid, may subsequently improve its takeover bid, so long as:

- the consideration offered in the closed envelope by the initial bidder is not 2% lower than the highest consideration offered by any other of the takeover bids; and
- the initial bidder improves the conditions of the competing takeover bids, either by increasing the price or consideration offered by the best bid received by at least 1% or by extending the initial takeover bid to more than 5% of securities with respect to the best competing bid.

(e) Break-up fee

The initial bidder is entitled to receive a fee from the target company in the event a competing takeover bid is submitted, provided such fee:

- does not exceed 1% of the takeover bid price; and
- has been approved by the board of directors, with a favorable report from the financial advisers to the company and described in the offer document.

(f) Information equality

Bidders are entitled to equal information, with the target company being under a duty to provide all bidders with the information made available to all other bidders, whether current or potential.

6.2 Target passivity rule and defensive measures

RD 1066/2007 imposes a general duty on the governing bodies and management of the target company, any delegated or empowered body of such and their respective members, as well as the companies belonging to the target company group and any company that may act jointly with the above, to remain passive and request prior shareholder approval before performing any act that may prevent the success of a takeover bid.

Without prejudice to the generality of the abovementioned limitation, the approval of the shareholders at a general meeting of the target company shall be specifically required before any of the following actions are taken:

- approve or initiate the issuance of securities that may prevent the success of a takeover bid;
- carry out or promote transactions related to the securities subject to the takeover bid or other securities, in an attempt to prevent the success of a takeover bid;
- dispose of, encumber or lease fixed or other company assets when the transaction could prevent the success of a takeover bid; or
- pay extraordinary dividends or remuneration of any kind that is not in line with standard company policy on dividend payments to shareholders or owners of other securities in the target company, except when the necessary company resolutions have been previously passed by the relevant company body and made public.

The only exception to the foregoing is that the board of directors of the target company does not need the approval of the shareholders (i) in order to seek other offers that compete with the takeover bid originally submitted; or (ii) if such action has been expressly approved by the bidder (subject to the CNMV's confirmation in each particular case).

The general duty to remain passive begins when a takeover bid is publicly announced and ends when the final result is published.

Notwithstanding the above, companies are entitled not to observe the preceding regulations when they are subject to a takeover bid launched by an entity whose registered company address is outside Spain and is not subject to equivalent regulations, i.e., whenever the bidder is entitled to take defensive measures without the need of approval by its general shareholders' meeting. In this case, previous approval of such regime by the general shareholders' meeting of the target company is required not later than 18 months before the takeover bid is made public.

6.3 Common preventive measures for hostile takeover bids

The preventive measures that may be adopted by a listed company in the event of a possible hostile takeover bid are basically of two kinds: measures contemplated in the by-laws and contractual measures.

The most effective preventive measure that may be contemplated in the by-laws of a listed company that is admissible in Spain is the limitation of the number of votes that may be cast by a single shareholder or by all shareholders belonging to the same group. Qualified quorums or voting majorities for the approval of certain resolutions, e.g., capital increases and the issue of bonds, may also be included in the by-laws of a listed company which, though they may favor the creation of a blocking minority that hinders the future plans of a possible hostile acquirer, may also affect the day-to-day management of the company. Another preventive measure that may be contained in the by-laws is the establishment of special requirements to be appointed director, for example, being a shareholder of the company over a minimum period of time prior to the appointment or to serve in key positions (chairman, chief executive officer) on the board of directors (such as, for example, a particular length of service as director of the company).

Contractual preventive measures may, in turn, be divided into two groups of measures: those provided for in contracts entered into by the company; and those arising from agreements executed by third parties. The former includes agreements which contain a change of control clause and which may affect assets, e.g., call options, financing, e.g., early redemption and interest rate increase provisions, issuances of securities, e.g., accelerated conversion clauses and clauses providing for a downward adjustment in the conversion price of convertible debentures, etc., and which, whether or not originally included for a defensive purpose, may discourage the submission of a takeover bid that has not been agreed upon. In relation to the second group, the most significant measures are possible restrictions on the transfer of shares that may be provided for in shareholders' agreements executed by the shareholders of the company, which may restrict the acceptance of the takeover bid by the parties to the shareholders' agreement.

In addition to preventive measures of a legal nature, there are measures or strategies of a financial nature, such as an increase in the company's leverage or the listing of subsidiaries, which may require a heightened financial effort in order to take control of the company by forcing the bidder to assume a greater debt or to increase the total consideration needed in view of the obligation to offer the acquisition of minority interests in subsidiaries by means of a successive takeover bid.

6.4 Breakthrough provisions

Listed companies that have preventive measures in place may decide that one or more of the following breakthrough measures apply in the event that the company is the target of a takeover bid:

(a) the ineffectiveness of any restriction on the transfer of securities established in any shareholders' agreement regarding the company during the takeover bid acceptance period;

(b) the ineffectiveness, at the shareholders' meeting at which decisions are made on the potential defensive measures to be adopted, of any restriction to the voting rights established in the company's by-laws or in any shareholders' agreement; or

(c) the ineffectiveness of any restriction mentioned in (i) and (ii) above with regard to shareholders' agreements in the event a bidder obtains a stake of at least 75% of the voting rights after launching a takeover bid.

The decision on whether to adopt or revoke said breakthrough measures must be passed at a general shareholders' meeting of the company. When a company decides to apply breakthrough measures, it must include a provision in its by-laws for adequate compensation for the loss suffered by the holders of the neutralized rights, together with a description of the manner in which such compensation shall be paid and the method used to determine it.

In line with the comments made above on defensive measures, in the event a company is subject to a takeover bid by an entity that has not adopted equivalent breakthrough measures, the target company may decide not to apply any breakthrough measures currently in place. In such case, the previous approval of the shareholders' meeting is required (no later than 18 months prior to the time the takeover bid is made public).

Finally, regardless of the optional breakthrough regime of the anti-takeover measures mentioned above, the SCA and the SMA establish an imperative breakthrough regime by means of which any by-law provisions that either directly or indirectly establish, on a general basis, a limit to the maximum number of votes corresponding to a shareholder, companies belonging to the same group or any person acting in concert with any of the foregoing, shall have no effect after a takeover bid in the event the bidder acquires at least 70% of voting rights.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

The SMA and RD 1066/2007 establish regulations governing the squeeze- out/sell-out regime set forth in the Takeover Directive whenever, as a result of a takeover:

(a) the bidder holds at least 90% of the voting rights in the target company's share capital; and

(b) the bid has been accepted by at least 90% of the shareholders with voting rights to which it was addressed.

In such cases:

- the bidder is entitled to a squeeze-out right whereby the remaining shareholders shall sell their shares to such bidder at an equitable price; and
- the shareholders of the target company are entitled to a sell- out right whereby they can make the bidder purchase their shares at an equitable price.

The maximum squeeze-out or sell-out term is three months as of the expiry of the acceptance period, and the intention of the bidder to exercise its right must be specified in the offer document. The equitable price shall be deemed to be the previous takeover bid consideration.

8. Delisting

In accordance with RD 1066/2007, whenever a company decides to delist its shares, a takeover bid shall be launched subject to a specific regime and requirements. Any other transaction by virtue of which the shareholders of a listed company become part or full shareholders in another non-listed entity, will be subject to the same procedure.

The so-called delisting takeover bid has the following characteristics:

- the decision to undertake the delisting, the launch of the takeover bid and the setting of the takeover price shall be approved by a shareholders' meeting of the target company;
- the takeover bid must be made directly by the target company to acquire its own shares or by a third party;
- the bid must be for 100% of the securities and structured as a purchase deal, in other words, for cash consideration;
- the bid price cannot be less than: (i) the equitable price (see 4.3 above); or (ii) the price resulting from jointly taking into account and justifying the respective relevance of different valuation methods of the shares of the target company, e.g., book value,

net asset value, weighted average price over the last six months, consideration offered in a preceding takeover bid and other generally accepted valuation methods, including cash flow discount, company multiples, comparable transactions and others. The determination of the price in accordance with the above must be documented in a report issued by the board of directors of the target company and usually supported by a valuation report prepared by an independent expert; and

- there are certain exceptions to the obligation to launch a delisting takeover bid, including, among others, when the conditions required to exercise a squeeze-out have been fulfilled or, in a previous bid, the intention to delist was expressed and: (i) the price in such bid was determined in accordance with delisting takeover bid criteria; (ii) the bidder has reached 75% of the voting rights of the relevant listed company as a result of such previous bid; and (iii) a purchase order is maintained for at least one month after the settlement of the preceding takeover bid at the same price as such preceding bid.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Public takeover bids in Multilateral Trading Facilities

Although the amended and restated SMA approved in 2023 sets out that the rules and principles relating to takeover bids therein regulated shall apply to Multilateral Trading Facilities (*Sistemas Multilaterales de Negociación*) such as the BME Growth segment of BME MTF Equity or Portfolio Stock Exchange, such application is subject to further development by way of Royal Decree.

On 8 January 2025, the draft Royal Decree that extends the application of the takeover bids framework to companies with shares admitted to trading on Multilateral Trading Facilities was published for public consultation. The new measure may enter into force after this remaining regulatory step is completed, which is expected to happen in early 2025.

Although the final wording may change, according to the draft, a new chapter will be added to Royal Decree 1066/2007 to develop the specific features needed to adapt the takeover bid framework to the characteristics of companies listed on Multilateral Trading Facilities, including the following:

(a) New exemptions from the obligation to launch a takeover bid upon gaining control, in addition to those set out in 3.9 above, which would be:

  (i) The acquisition of a percentage of voting rights of 30% or more, but less than 50%.

  (ii) The appointment of more than half of the directors, provided that the bidder holds more than 50% of the voting rights.

  (iii) The acquisition of control by subscribing shares in a capital increase excluding the shareholders' pre-emption rights, or by capitalization, conversion or exchange of other securities issued, excluding the shareholders' pre-emption rights, provided a 75% majority of the shareholders at the general meeting support the resolution to increase the share capital or issue the securities subject to capitalization, conversion or exchange. In addition, the proposed resolution must state, among other minimum requirements, that the acquisition of control does not require a mandatory takeover bid. This exception needs to be validated by the CNMV before it is applied.

(b) An extension of the deadline, from three to 12 months, for reducing the stake or launching a takeover bid in the event of an indirect mandatory takeover bid.

(c) The removal of CNMV supervision of the independent expert's report in delisting bids, provided that the independent expert is registered with a special register to be set up by the relevant Multilateral Trading Facility.

(d) A simplified delisting process when initiated at the issuer's request, where a delisting takeover bid would not be required:

    (i) When the decision to delist is adopted by resolution of the shareholders' meeting, requiring for its approval a majority of 75% of the votes, and the sale of all the securities is facilitated by the placing of a purchase order for such securities, with payment in cash, by the company issuing the securities itself or by another person or entity provided that it has the approval of the shareholders' meeting and that it does not achieve, as a result of the purchase order, a controlling participation in the company, individually or in concert; or

    (ii) When the company's shares are immediately admitted to trading on a Multilateral Trading Facility that is classified as an "SME growth market" or on a regulated market following delisting from the MTF. This shall also apply to companies admitted to trading on a Multilateral Trading Facility classified as an "SME growth market" when their shares are immediately admitted to trading on a regulated market.

(e) In addition to bank guarantees (*avales*) or cash deposits, bidders whose takeover bids (either in whole or in part) involve cash consideration may provide documentation evidencing that they have secured a loan or a credit line to finance the payment of the consideration, as security for their payment obligations under the takeover bid.

The draft Royal Decree provides that the new framework will apply to all takeover bids announced after the Royal Decree enters into force, which, according to such draft, is expected to happen 20 days after the Royal Decree is published in the Spanish State Gazette.

10. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

11. Contacts within Baker McKenzie

Fernando Torrente, Enrique Carretero and Carlos Martín in the Madrid office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Spain.

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Sweden

1. Overview

Sweden has over the years been attractive for public M&A deals with attractive price levels, a well-developed regulatory regime and few obstacles to public takeovers.

2. General Legal Framework

2.1 Main legal framework

Sweden's regulatory regime aims to protect the shareholders of a target company and to create a system of rules for participants in a takeover. The main rules and principles of Swedish law relating to public takeover bids on a regulated market can be found in:

- The Swedish Public Takeovers Act (2006:451) ("**Takeover Act**") (*Lag om offentliga uppköpserbjudanden på aktiemarknaden*);
- Takeover Rules for Regulated Markets ("**Takeover Code**") (*Takeover-regler för reglerade marknader*);
- The Swedish Financial Instruments Trading Act (1991:980) ("**Trading Act**") (*Lag om handel med finansiella instrument*), which contains rules on shareholding disclosure requirements and offer documents;
- The Swedish Companies Act (2005:551) ("**Companies Act**") (*Aktiebolagslagen*), which does not specifically address public offers, but contains relevant provisions relating to, for example, the duties of directors; and
- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ("**Market Abuse Regulation**" or "**MAR**"), which contains rules regarding insider information, insider dealing and market manipulation.

The main body of the Swedish takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still certain differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

2.2 The Swedish Foreign Direct Investment Review Act

On 1 December 2023, Sweden implemented the Swedish Foreign Direct Investment Review Act (*Lag om granskning av utländska direktinvesteringar)* ("**FDI-Act**"), which includes a general screening mechanism for investments in certain businesses deemed protection-worthy. This legislation aims to safeguard national security, public order, and public safety.

The Swedish FDI Act requires mandatory notification for investments that result in the acquisition of voting rights in companies conducting protected activities. The specific thresholds are:

- 10%

- 20%
- 30%
- 50%
- 65%
- 90%

These thresholds apply to both direct and indirect investments. The notification obligation can be triggered even if the investor does not gain control over the company but acquires a significant minority holding, provided the abovementioned thresholds are met. Investors must notify Swedish authorities and obtain clearance before completing the investment. The Swedish Inspectorate of Strategic Products ("**ISP**") (*Inspektionen för Strategiska Produkter*) oversees the review process. From receipt of a complete notification, ISP has 25 working days to decide whether to leave the notification without action or to initiate an in-depth review. A standstill obligation applies during ISP's review. If an investment is made without the required notification, the ISP can still review it ex officio, impose penalties and in worst case, revoke the investment.

2.3 Other rules and principles

While the aforementioned legislation contains the main legal framework for public takeover bids in Sweden, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

(a) The rules relating to sanctions for insider dealing and market manipulation as set out in the Swedish Securities Market Abuse Penalties Act (2016:1307) ("**Securities Market Abuse Penalties Act**") (*Lag om straff för marknadsmissbruk på värdepappersmarknaden*) and in the Act with Swedish Complementing Regulations to the EU Market Abuse Regulation (2016:1306) (*Lag med kompletterande bestämmelser till EU:s marknadsmissbruksförordning*).

(b) The rules relating to the public offer of securities, and the admission to trading of these securities on a regulated market, are set out in the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

(c) The general rules on the supervision and control over the financial markets including the framework legislation in the Swedish Securities Markets Act (2007:528) ("**Securities Markets Act**") (*Lag om vädepappersmarknaden*). The Securities Markets Act imposes a statutory obligation on the exchanges to establish a self-regulatory Takeover Code.

(d) Further rules may apply to bids on companies in certain sectors, such as companies operating under the supervision of the Swedish Financial Supervisory Authority ("**SFSA**") (*Finansinspektionen*), for example companies with license to conduct banking, insurance or finance business operations.

(e) The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

2.4 Supervision and enforcement

Public takeover bids are subject to the supervision and control of the Disciplinary Committees of the Regulated Markets, the Swedish Securities Council (*Aktiemarknadsnämnden*) ("**SSC**") and ultimately the SFSA. The SFSA is the principal securities regulator in Sweden.

The abovementioned bodies have a number of legal tools available to supervise and enforce compliance with the public takeover bid rules, including administrative fines.

The SSC and the SFSA (and ultimately the administrative courts) also have the power to grant, in certain cases, exemptions from the rules that would otherwise apply to a public takeover bid.

2.5 General principles

The following general principles apply to public takeovers in Sweden. These rules are based on the EU Takeover Directive which has been implemented in the Takeover Act:

(a) all holders of the same class of securities of a target company must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the target company's places of business;

(c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false conditions for trading must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that it has certain funds and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

It should be noted that Swedish law has a strong focus on the rights of shareholders in relation to takeover bids. Thus, principle (c) above should be construed as meaning that the board of directors should act in the interest of the shareholders as a whole (see rule II.17 in the Takeover Code).

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

Swedish law provides for multiple classes of shares with different voting rights. One class of shares may represent up to 10 times the voting rights of another class. Consequently, the number of shares does not always correspond to the voting power.

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Swedish listed entity:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings. • The right to introduce additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda, by request to the board of directors prior to the issuance of the notice of a meeting. • The right to obtain a copy of the documentation submitted to general shareholders' meetings. • The right to submit questions to the directors and statutory auditors at general shareholders' meetings (orally at the meeting). • The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons (as provided for in Ch. 7 Sections 50-51 of the Swedish Companies Act). • In case of a merger or de-merger, the right to file a liability claim against directors or to request the nullity of the merger or de-merger.
5% of the shares or the votes	• Significant holding level which, provided that the company is listed on a regulated market, requires the holder to notify the listed company and the SFSA. Changes in major shareholdings must be notified when a shareholder passes the following holding thresholds: 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66 2/3 % and 90% of the total number of shares or votes in the company.
10% of the shares	• The right to request the board of directors to convene a general shareholders' meeting. • The right to request the Swedish Companies Registration Office (*Bolagsverket*) to appoint a special expert to check the company's books, financial records and acts of the company's corporate bodies, or to appoint a minority auditor who will take part in the statutory audit. • The right to file derivative action against the directors on behalf of the company. • The right to block a decision to discharge the directors and managing director from liability. • The right to block decisions which require more than 90% majority according to the Companies Act. • The right to request redemption of minority shares.

Shareholding	Rights
30% of the votes	Significant holding level which requires the holder, once the level is reached, to announce the magnitude of the shareholding and, within *four weeks*, place a mandatory bid offer regarding the remaining outstanding shares.
More than 33% of the votes (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block any changes to the articles of association.
More than 50% of the votes (at a general shareholders' meeting)	The ability at a general shareholders' meeting to, amongst other things: • appoint and dismiss directors and approve the remuneration and, as relevant, severance package of directors; • approve certain aspects of the remuneration and severance package of executive management; • appoint and dismiss statutory auditors and approve their remuneration; and • approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors).
More than 66 2/3% of the votes	The ability to ensure that certain special resolutions are passed, e.g., directed share issues.
More than 90% of the shares	The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**").

3.2 Restrictions and careful planning

Swedish law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid by a bidder or a target company, and prior due diligence by a potential offeror. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential offeror or target company intends to initiate a process that is to lead towards a public takeover bid.

3.3 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse according to MAR are applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, amongst other things, a prohibition on the manipulation of the target's stock price, for example by creating misleading rumors. In addition, the rules prohibiting insider trading prevent an offeror that has inside information regarding a target company (other than such information received in relation to the actual takeover bid) from trading in the target company's securities.

3.4 Disclosure of shareholdings

The rules relating to the disclosure of changes in major shareholdings in listed companies on a regulated market ("**Transparency Rules**") are contained in the Trading Act. These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, with Directive 2013/50/EU amending the Transparency Directive.

The rules regarding the disclosure of changes in major shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential offeror starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached thereto have passed an applicable disclosure threshold. As stated above, the relevant disclosure thresholds are 5%, multiples of 5% up to 30%, and 50%, 66% (2/3) and 90% thereafter.

When determining whether a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements, such as call option agreements or voting agreements.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency.

These rules include that a company must immediately publicly disclose all inside information, subject to exemptions contained in Article 17 of the MAR. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid would normally constitute inside information. If so, the target company may be obliged to announce this. However, the board of the target company can delay the public disclosure for a limited period of time if it believes that a disclosure would not be in the legitimate interest of the company. For instance, legitimate interest could be the case if the target's board believes that an early disclosure would prejudice the negotiation of a bid. A delay of the public disclosure, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

3.6 Announcements of a public takeover bid

An offeror that intends to make a public takeover bid must first undertake to comply with the Takeover Act and the Takeover Code by a notification to the regulated market on which the target company's shares are admitted to trading. After the notification, the offeror may announce the bid. Prior to announcing the bid, any uncertainty regarding the interpretation of a provision in the Takeover Code in a specific case should be eliminated by submitting an enquiry to the SSC.

As a takeover bid announcement will normally have an effect on the price of the target's shares, it must, as far as possible, contain all the facts that are relevant to making a proper assessment of the share price.

Within four weeks from the announcement, the bidder must file an offer document with the SFSA. The SFSA must scrutinize and provide comments on the offer document within 10 business days. The offer document is normally approved by the SFSA a few days after the offer document has been revised in accordance with any comments received from the SFSA. As soon as the approved offer document is published, the acceptance period can start.

If there are rumors or leaks that a potential offeror intends to launch a public takeover bid, the SSC could force an announcement. This could lead to an early disclosure and possibly an acceleration of the preparations by an offeror, as the bidder could be forced to make an announcement as to the offeror's intentions.

3.7 Early disclosure

If an offeror has been compelled by the SSC to make an early disclosure, the SSC may decide that a bid must be announced within a certain period of time or that the offeror must otherwise refrain from making a bid.

3.8 Due diligence

The Swedish public takeover bid rules contain general rules about a pre-offer due diligence. If the offeror requests that it be permitted to conduct a due diligence on the target company, the board of the target company is to decide whether the company can and will participate in such an investigation and, if so, on what conditions and to what extent. The board is to limit the investigation to factors necessary for submitting and implementing the bid. Having said this, the concept of a prior due diligence or pre-acquisition review by an offeror is generally accepted and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures, a limitation on sharing information and data rooms. Inside information is often specifically excluded from information shared since there is an obligation to disclose such shared information (see also 6.2).

As indicated above, there is no obligation for the target board to allow a due diligence process and it is up to the board to decide whether or not a due diligence is appropriate in the individual case. It is unlikely that a reasonable refusal from the board to allow a due diligence could lead to the target board being held liable for damages on any ground. The target board must determine to what extent a request for due diligence should be met, taking into consideration the commercial interest of the target and its shareholders, and keeping in mind the principle that all shareholders must receive equal treatment, for example, disclosure of inside information. Thus, the target board must assess whether or not the offeror is serious and if the terms of the takeover bid are sufficiently favorable to justify a due diligence.

3.9 Acting in concert

For the purposes of the Swedish takeover bid rules, persons are "acting in concert":

- if they collaborate with the offeror, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring control over the target company, facilitating the implementation of a takeover bid or maintaining control over the target company;
- if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy vis-à-vis the target company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. This is the case, for example, when a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise to determine whether persons act or do not act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities as a result of which the group in the aggregate would pass the 30% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 30% threshold.

4. Effecting a Takeover

There are two main forms of takeover bids in Sweden:

- a voluntary takeover bid, in which an offeror voluntarily makes an offer for all or up to 30% of the voting securities issued by the target company. A bid for less than all of the shares is uncommon; and
- a mandatory takeover bid, which an offeror is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of 30% of the voting securities of the target.

4.1 Voluntary public takeover bid

- The offeror is free to make the takeover bid subject to specified conditions that the offeror may not have control over, such as, among other things, merger control clearance, minimum acceptance level or a material adverse change condition.
- The offeror is in principle free to determine the form of consideration offered to the target shareholders.
- The offeror is in principle free to decide the price if the consideration is to be paid in cash, subject to the condition that the highest price paid by the offeror within six months before or after the bid, or during the bid, must be reflected in the price.
- The offered price may be paid in cash, securities or a combination of both. All shareholders of the same class of securities must have equal rights to any form or value of consideration, subject to exceptions granted by the SSC or if there are certain circumstances in the specific case in favor of an exception such as legal obstacles for receiving the consideration.

4.2 Mandatory public takeover bid

- A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) as a result of an acquisition of voting securities, directly or indirectly holds more than 30% of the (actual outstanding) voting securities of the target company. The mandatory takeover bid is unconditional. However, instead of making a mandatory bid, the offeror may submit a voluntary bid. The SSC may grant exceptions from the mandatory public takeover bid obligation. Situations in which the SSC has granted exceptions include the following:
- the stake is acquired from an affiliate (i.e., no change of real control);
- a third party exercises control over the target company or holds a larger shareholding in the company than the party holding more than 30%;
- the stake is acquired within the framework of a subscription to a capital increase with preferential subscription rights for the shareholders, which has been decided upon by the general shareholders' meeting, i.e., a rights offering;

- the stake is acquired within the framework of a subscription to a capital increase by a target company in severe financial difficulties, which has been decided upon by the general shareholders' meeting; and
- the stake is acquired in connection with an issue in kind, i.e., where the third party is being paid shares in the target company as consideration when the target company is making an acquisition.
- In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary takeover bid. In addition:
- the price must be equal or higher to the price paid by the bidder for any shares within a period of six months before or after the bid, or the weighted average trading price for securities of the target company which have been settled in shares;
- in the case of an indirect acquisition of at least 30% of the target company, for example, when the offeror has acquired control of a company (hereafter referred to as the holding company), which in turn owns shares in the target company, the prior transaction is to be considered as conducted at a price per share corresponding to the volume weighted average price of the share during the 20 trading days preceding the date of acquisition of the holding company. If, when acquiring the holding company, the offeror has assigned a higher price for the target company shares, i.e., if the part of the purchase price of the holding company that the offeror allocated to the target company shares means a higher price per target company share than the 20 day average, the prior transaction is instead to be considered as carried out at a price per share corresponding to that assigned price. The offeror will be obliged to provide information on the purchase price for the holding company, how the purchase price was allocated between the target company shares and other assets and the reasoning that led to this allocation.
- the consideration offered can consist of cash, securities or a combination of both. However, a cash alternative must be offered; and
- the SSC may allow exceptions from the rules on consideration.

4.3 Follow-on squeeze-out and sell-out right

- **Follow-on squeeze-out** - a bidder will be able to squeeze out the residual minority shareholders if it holds, directly or indirectly, 90% of the voting securities of the target company.
- **Sell-out right** if the bidder is not itself launching a squeeze- out - minority shareholders have a sell-out right if the offeror holds, directly or indirectly, 90% of the voting securities of the target company.

5. Timeline

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

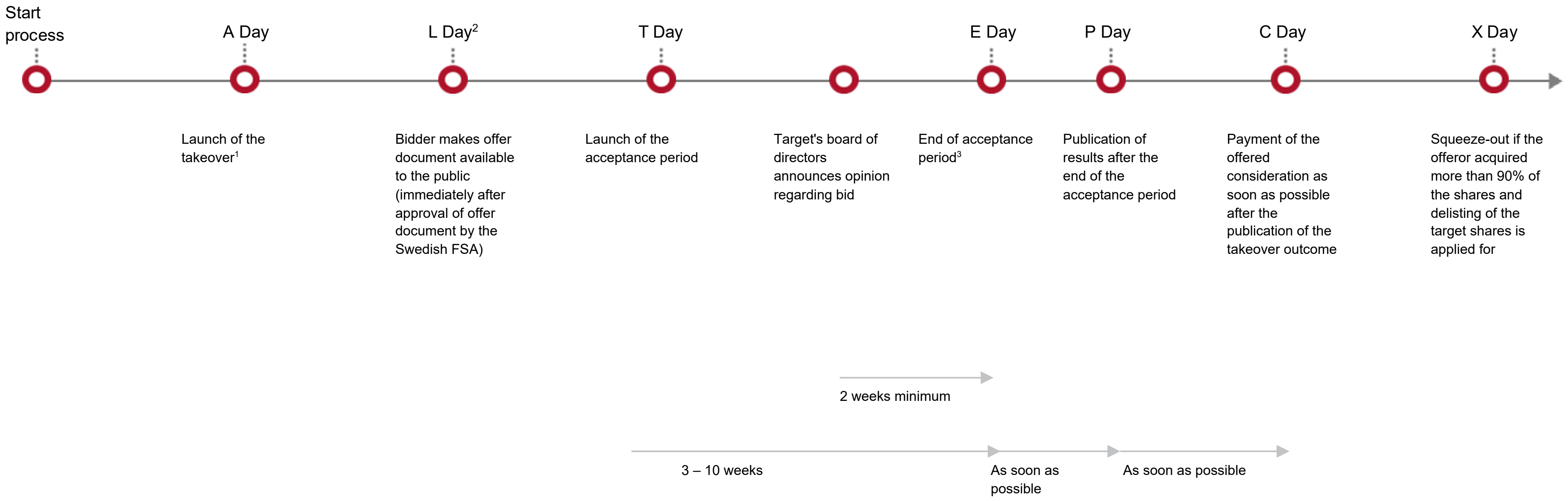
The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process on a regulated market in Sweden.

Step	
1.	**Preparatory stage:** • Preparation of the bid by the offeror (study, due diligence, financing and draft offer document/prospectus). • The bidder approaches the board of the target company and/ or its key shareholders. Due to the ownership structure on the Swedish stock market, it is usually advisable to approach key shareholders at this stage. • Negotiations with the board of the target company and/or its key shareholders. Due to the ownership structure on the Swedish stock market, it is usually advisable to negotiate with key shareholders, possibly securing irrevocable undertakings where the shareholders agree to accept the takeover bid under certain circumstances. • The bidder must enter into an undertaking with the regulated market to comply with the applicable takeover regulations. • Apply for consultations and exceptions from the SSC, as necessary.
2.	**Launching of the bid:** • The offeror may announce a bid after having undertaken to comply with the applicable takeover regulations. • The board of the target company issues a statement of its recommendation for the shareholders. • Within four weeks from the announcement, the offeror must make an offer document public. Prior to that, the offer document must have been filed with, and approved by, the SFSA. • The offeror may not withdraw from the bid after it has been announced unless the bidder made it subject to specified conditions. • In a negotiated bid, the offeror is expected to include the response on the bid from the board of directors of the target company.
3.	Information to employees of the target company when the bid has been publicly disclosed.
4.	**Launch of the acceptance period:** • **Start:** not before the offer document has been made public. • **Duration:** not less than three weeks and not more than 10 weeks. • The acceptance period may be extended if the bidder has provided for possible extension in the offer document, after approval by the SSC, or in accordance with applicable takeover regulation. The total acceptance period may not be extended by more than three months or, if the offer is conditional on the attainment of necessary regulatory approval, nine months. The SSC may approve even longer extensions. • Without prejudice to the above, the acceptance period may be extended if the offeror has announced that it will complete the bid.

Step	
5.	The target company's board of directors announces its opinion regarding the bid no later than two weeks prior to the end of the acceptance period.
6.	Publication of results as soon as possible after the end of the acceptance period.
7.	Payment of the offered consideration by the offeror as soon as possible after publication of the result.
8.	Squeeze-out if the offeror acquired more than 90% of the shares and delisting of the target shares is applied for

Set out below is an overview of the main steps for a voluntary public takeover in Sweden.

Voluntary public takeover (indicative timeline)



Start process

A Day
Launch of the takeover[1]

L Day[2]
Bidder makes offer document available to the public (immediately after approval of offer document by the Swedish FSA)

T Day
Launch of the acceptance period

Target's board of directors announces opinion regarding bid

E Day
End of acceptance period[3]

P Day
Publication of results after the end of the acceptance period

C Day
Payment of the offered consideration as soon as possible after the publication of the takeover outcome

X Day
Squeeze-out if the offeror acquired more than 90% of the shares and delisting of the target shares is applied for

2 weeks minimum

3 – 10 weeks

As soon as possible

As soon as possible

(3) Offer document/prospectus filed with Swedish Financial Supervisory Authority (SFSA) (*Finansinspektionen*) within four weeks of announcement (but normally before A Day)
(4) Usually this is shortly after A Day
(5) Normally the acceptance period is closer to three weeks but may be extended by one week to allow for additional acceptances following a declaration that the takeover has been completed

6. Takeover Tactics

6.1 Inside information

A Swedish public listed company is required to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public:

- "Inside information" means information of a precise nature which has not been made public, relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
- Information shall be deemed to be of a "precise nature" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.
- "Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" shall mean information that a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the target company to determine if certain information qualifies as "inside information". A voluntary takeover bid would be considered inside information. However, the board of the target company can delay the public disclosure for a limited period of time if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiation of a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

6.2 In the event of a public takeover bid

Prior to the announcement of a public takeover bid, the parties will, as mentioned in 6.1 above, rely on the provisions in Article 17.4 of the MAR to delay the public disclosure of the potential bid. In case of rumors or leaks, an obligation to disclose information may be imposed by MAR, listing rules or by a decision from the SSC.

If the offeror launches a bid and if the target company during the course of the due diligence provides the offeror with inside information, the target company is to ensure that this information is made public as soon as possible. The information must only be made public if a bid is actually launched. The information is normally made public by the target company in connection with the announcement of the bid and is also to be included in the offer document.

6.3 Insider dealing and market abuse

Rules on what constitutes insider dealing and market abuse follows from MAR. In principle such offences are subject to criminal prosecution and punishable according to the Securities Market Abuse Penalties Act, which is a transposition of Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse ("**Market Abuse Directive**") and the Act with Complementing Regulations to the EU Market Abuse Regulation, which complements MAR. As the framework is based on EU legislation, similar rules on insider dealing and market abuse exist in other jurisdictions of the EEA.

As a general rule, a potential bidder should refrain from trading in the target company's securities without appropriate prior legal consultation in order to minimize the risk of any unintentional negative effects.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid.

6.4 Anti-takeover defense mechanisms

In practice, Swedish takeover defense mechanisms are not applied in Swedish takeover bids. Under the Takeover Act, actions by the management or the board of directors in the target company which may be construed as frustrating a public takeover bid can only be taken with prior approval from the general meeting of the shareholders or the SSC (however, this has never occurred and even if approval for frustrating actions were approved, even a slight change in the bid, such as a minor adjustment of the price, would mean that a new approval would have to be sought).

Defense measures requiring shareholder approval may include, for example, issuing shares for non-cash consideration, buy-backs of shares, acquisitions or disposals of assets or a counter takeover bid to the bidder's shareholders.

However, it is possible for a target company to try to solicit an alternative bidder (a 'white knight') to make a rival bid or to acquire a large shareholding.

7. Squeeze-out of minority shareholders after completion of the takeover

7.1 Squeeze-out

If, following the takeover bid, the offeror directly or indirectly holds 90% of the share capital with voting rights, the bidder can force the other shareholders to sell their shares at the price offered in the takeover bid.

This type of squeeze-out procedure is subject to the same rules and procedures that would otherwise apply to a stand-alone squeeze-out procedure outside the framework of a voluntary or mandatory public takeover bid, with the exception of the price (provided that more than 90% of the outstanding shares not held by the offeror are acquired in the bid).

7.2 Redemption

In the same situation referred to in 7.1, the minority shareholders have a corresponding right to force redemption of their shares.

7.3 Restrictions on acquiring securities after the takeover bid period

If the offeror withdraws from a bid, the offeror or anyone acting in concert with the offeror may not launch a new bid for the target company within 12 months, unless the new offer is recommended by the board of directors of the target company; or if the offer was withdrawn after the nine-month period due to the failure to obtain the required regulatory approvals and a new offer is made within four weeks after approval of the required regulatory approvals.

8. Delisting

A delisting requires a decision by the target company's board of directors only. The target board can apply for delisting in writing to the stock exchange as soon as the bidder has reached the 90% ownership threshold. The stock market operator has no power to oppose a delisting but the SSC has issued statements providing guidance to companies on what considerations should be taken into account prior to passing a resolution to delist.

When the stock exchange receives an application for delisting, it investigates the trading in the target company's shares and draws up a timetable for the delisting procedure.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Joakim Falkner and Carl Svernlöv in the Stockholm office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Sweden.

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Switzerland

1. Overview

The three stock exchanges in Switzerland together host over 250 companies with a main listing of equity securities on at least one of these exchanges. Among these companies are large corporates like Novartis and Nestlé, global banks like UBS and a number of smaller players that often focus on specialized niche markets. Industry coverage is broad. Swiss companies are examined as possible takeover targets, although not many of the transactions are successful. This is partly due to a range of anti-takeover measures applied by Swiss companies. While there are very few companies with real poison pills, there are a number with clauses in their articles of association that may slow down a takeover or decrease the probability of success. In spite of this, public M&A remains possible, even if the target is unwilling to support the transaction.

2. General Legal Framework

2.1 Applicable rules and regulations

The general legal framework for public takeover bids and the acquisition of major shareholdings in companies listed in Switzerland is set out in the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 ("**FMIA**"). The FMIA is complemented by several ordinances, three of which are relevant for public takeover bids:

- The Ordinance of the Takeover Board on Public Takeover Offers of 21 August 2008. This contains the details on the procedure, the documents to be published and the rights and obligations in public takeovers;
- The Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 3 December 2015. This contains the details of major shareholder disclosures and the rules applicable to mandatory takeover bids, which, by reference, also partly apply to voluntary offers; and
- The Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 25 November 2015. This deals with the major shareholder disclosure rules for foreign companies with a primary listing on a Swiss stock exchange, the fees payable to the Swiss authorities in connection with public takeover bids, the squeeze-out of minority shareholders and certain exemptions to the ban on insider trading and market manipulation.

While the aforementioned legislation contains the main legal framework for public takeover bids, there are a number of additional rules to be observed when preparing and implementing a public takeover bid, such as the listing rules and regulations of the relevant stock exchange and Swiss corporate law rules.

2.2 General objectives

Swiss public takeover regulations are governed by several major objectives:

(a) Transparency

Swiss public takeover regulations aim to ensure transparency. All shareholders of the target company shall have sufficient time and information to enable them to reach an informed decision on whether or not to accept the offer. This results in the duty to publish an offer prospectus and the duty to publish a board report explaining the effects of the offer on the target company and its shareholders.

(b) Equal treatment of the shareholders of the target company

A further objective is to ensure that the target shareholders are treated equally. All shareholders shall have equal access to information and be able to sell their shares according to the same terms and conditions. This principle takes account of the fact that the minority shareholders are in a weak bargaining position vis-à-vis the bidder. The most important equal treatment rules are the best price rule and the rule that any offer that takes the bidder across the 33⅓% voting rights threshold needs to be for all the shares of the target.

(c) Equal treatment of different bidders

The principle of equal treatment also extends to all potential bidders. The target company is obliged to ensure equal treatment of all potential bidders and to allow a fair competing offer process.

(d) Expedient proceedings

The public takeover rules provide for expedient proceedings with decisions taken within a short period of time.

2.3 Key regulatory bodies

Public takeover bids are subject to the supervision of the Swiss Takeover Board ("**TOB**"). The TOB reviews and approves the offer documentation and supervises compliance with the public takeover regulations. Decisions of the TOB may be appealed to the Swiss Financial Market Supervisory Authority ("**FINMA**"). The Federal Administrative Court is the appeal body for any decisions rendered by the FINMA. The decision of the Federal Administrative Court in takeover matters is final.

2.4 Foreign investment restrictions

Foreign investments are not restricted in Switzerland with the exception of investments into real estate used for business purposes. Unless in the context of specific industries and sectors (such as the financial industry), takeovers are not subject to prior governmental or regulatory approvals other than customary anti-trust approvals. However, based on a parliamentary motion, the Federal Council has drafted a Federal Act regarding the Screening of Foreign Investments. The draft law was circulated for consultation on 18 May 2022 and submitted to parliament with a dispatch dated 15 December 2023. The draft law is currently in consultation in the two chambers of the legislature. The purpose of the draft law is to avoid takeovers of Swiss enterprises by foreign investors if such takeover would threaten public safety or order. As of the date of this guide, it is uncertain whether and in which form such law will be adopted.

3. Before a Public Takeover Bid

3.1 In general

(a) Summary of shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholdings within a Swiss company listed on a Swiss stock exchange:

Shareholding	Rights
One share	• Right to attend and vote at general shareholders' meetings. • Entitlement to a pro rata share of the disposable profit to the extent that the distribution of such profit among shareholders is resolved by the shareholders' meeting and provided for by law or the company's articles of association. • Entitlement to a pro rata share of the liquidation proceeds upon liquidation of the company, unless otherwise provided by the articles of association. • Right of holders of registered shares to be entered into the shareholders' register of the company. • Right to inspect and/or request a copy of the annual report and the audit report of the company to be voted on at the annual shareholders' meeting. • Right to request a copy of the annual report in the form approved by the shareholders' meeting and the audit report from the company during the year following the relevant shareholders' meeting. • Right to submit questions to the board of directors and the statutory auditors at the shareholders' meeting. • Right to receive electronic access to the resolutions and the election results of a shareholders' meeting with details of the percentage of votes. • Right to request the shareholders' meeting to have specific matters clarified by means of a special investigation, provided that (i) this is necessary for exercising shareholder rights and (ii) the ordinary rights to information and inspection have already been exercised. • Right to request the court to take adequate measures in case the company does not have a required corporate body or if the composition of one of the corporate bodies does not comply with the law. • Right to file a claim for the payment of damages, possibly to the company, against persons involved in the formation, drafting or distribution of a prospectus regarding the securities,

Shareholding	Rights
	management, liquidation or audit of the company in case of breach of corporate law. • Right to challenge, in court, resolutions of the shareholders' meeting which violate the law or the articles of association. • Various rights to file actions under the Swiss Merger Act.
Shares in an aggregate nominal amount of 0.5% of share capital or votes	• Right to request the board of directors to put additional items on the agenda of a shareholders' meeting.
5%	• Right to apply to the court to appoint a special auditor within three months following the rejection of the shareholders' meeting to designate such an auditor. • Right to request the board of directors to convene a shareholders' meeting.
More than 33⅓% (at a shareholders' meeting)	Ability to block: • Changes to the corporate purpose clause of the company; • The introduction of shares with preferential voting rights; • The implementation of any restriction on the transferability of registered shares; • The introduction of a capital band, a contingent capital increase or the creation of reserve capital according to Article 12 of the Federal Banking Act; • A capital increase, funded by equity capital, against contributions in kind or to fund acquisitions in kind and the granting of special privileges; • Any restriction or cancellation of subscription rights of the shareholders; • A relocation of the seat of the company; • The dissolution, a merger, a demerger or the sale of the entire or substantially the entire business of the company; and

Shareholding	Rights
	- The delisting of the shares.
More than 50% (at a shareholders' meeting)	Ability at a shareholders' meeting to pass shareholders' resolutions other than the shareholders' resolutions referred to in the preceding row above.
66⅔% (at a shareholders' meeting)	Ability at a shareholders' meeting to pass the resolutions referred to two rows above.
90%	Possibility to squeeze out minority shareholders through a cash-out merger.
More than 98%	Possibility to squeeze out other shareholders after a takeover bid.

(b) Scope of Swiss public takeover rules

The Swiss public takeover rules apply to public takeover bids for equity securities of target companies with registered offices in Switzerland and equity securities at least partly listed on a Swiss stock exchange. The rules also apply to foreign companies with equity securities at least part of which are mainly listed on a Swiss stock exchange, provided it is not a mere secondary listing. If a foreign takeover regime also applies, the TOB decides on the limits of Swiss law with a view to avoiding contradictions and maintaining protection for shareholders.

3.2 Selected aspects of the pre-acquisition phase

Several rules need to be taken into account in the pre-acquisition phase to ensure compliance with takeover and other capital market regulations (see 6 below for tactical aspects):

(a) Financing of the transaction

The review body needs to confirm at the time of publication of the prospectus that the bidder has taken the necessary measures to ensure that financing will be available on the settlement date. Therefore, in a debt financed transaction, full financing must be secured prior to the offer. In an exchange offer, preparations need to be made to have the required equity available at the time of the settlement. These steps and, in particular, the structuring of the debt financing require time to prepare (for further details on the security of funds concept under Swiss law, see 4.1 and 4.2 below).

(b) Stake building and disclosure of shareholdings

A bidder may have various reasons to build a stake in the target company before starting the bid. These may be to: (i) warn off competing bidders; (ii) obtain a level of shareholdings that gives substantial shareholder rights; or (iii) cover its costs for the bid should a competing bidder succeed.

However, hidden stake building is limited due to the obligation to disclose major shareholdings in listed companies. The disclosure rules apply to shareholdings in Swiss companies with equity securities listed on a Swiss stock exchange and to foreign companies with equity securities with a main listing on such exchange. Reporting thresholds are 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights (a proposed amendment of the law intends to abolish the 3% threshold). A reporting obligation is triggered when the relevant reporting thresholds are reached or crossed. Holdings in financial derivatives, irrespective of whether they are cash settled or not, including call and put options, equity swaps, contracts for difference and share lending, also need to be disclosed. Securities that are acquired indirectly or by a coordinated group are to be aggregated. Shares for which a person is entitled to discretionarily exercise voting rights also need to be included with any other securities held. The thresholds apply individually to long positions, short positions and share positions. A report to the company and the disclosure office needs to be made within four trading days from the day of entering into the transaction, irrespective of when the trade is settled. A conditional purchase does not exempt the purchaser from making a disclosure. The company must publish the report within two trading days upon receipt.

In addition to complying with the disclosure rules, a bidder also needs to comply with the price rules. As will be set out further below (see 4), the acquisition price during the 12-month period before the offer is relevant when determining the minimum price to be offered in the bid.

(c) Contacting the target company

(i) In general

If the bidder is interested in pursuing a public takeover after an evaluation of the target company's non-public information, or wishes to secure the support of the target's board, the bidder's first step will be to approach the board of the target. The approach needs to be made by notifying the contact person that it will receive insider information and that such information must not be exploited. That notification must be documented either by a file note, a taped record (if admissible) or a written notification.

The board of the target has no obligation to react to the approach of a bidder, unless the target is not able to follow a standalone strategy anymore. In that case, the board must evaluate the proposed bid.

If the target company rejects the approach outright or does not react at all, it is under no obligation to make an ad hoc disclosure. However, if the target starts to consider the approach by the bidder, it needs to disclose the approach made under ad hoc publicity rules. This may be avoided by promptly entering into a confidentiality agreement.

(ii) Confidentiality and standstill agreement

If both the bidder and the target are interested in evaluating the takeover bid, they will enter into a confidentiality agreement, sometimes combined with a standstill clause. In the confidentiality agreement, the target company and the bidder agree to maintain confidentiality regarding the transaction, the negotiations and all information disclosed to a party during the negotiations.

(d) Due diligence

Swiss public takeover regulations do not contain rules as to whether or not a due diligence is to be granted by the target company, nor how such due diligence is to be organized. However, the obligation of the target to treat bidders equally requires the target to grant equal access to due diligence, if due diligence access is granted at all. A due diligence review is frequently, but not always, conducted. Appropriate mechanisms have been developed in practice to organize a due diligence and to cope with potential market abuse and early disclosure concerns. As the target company is listed on a Swiss stock exchange and generally has to publish any price sensitive information, financials, corporate governance information and compensation reports, the access to information by the bidder within a due diligence is often quite limited. Further limitations arise because the target has to treat competing bidders equally and therefore must fully disclose the due diligence information to other bidders in a bidding process. Therefore, a due diligence review is usually limited in scope. It typically focuses on transaction obstacles, change of control issues, equity compensation schemes and their impact on the takeover, site visits, reviews of business plans and discussions with management.

The board of directors decides whether or not, and to what extent, a bidder is granted a due diligence review. Such decision is based on the potential benefit for the target company, taking into account the effect of the due diligence on the offer price, whether or not the bidder is a competitor of the target company and the probability of the bidder submitting the offer. The board also takes into account whether or not there may be competing bidders that are entitled to review the same documents under the equal treatment rules.

(e) Transaction agreement

If the board of the target comes to the conclusion that a takeover is in the interest of the target and its shareholders and the bidder is willing to submit a bid, the target and the bidder typically enter into a transaction agreement. The transaction agreement is signed immediately prior to the start of the offer. This triggers the obligation on the part of the target company to notify the public of the transaction.

Typically, the following items are covered by the transaction agreement:

- Structure of the transaction (including price, offer conditions and timetable) and content of the offer documents;
- Obligation of the bidder to submit the offer and of the target board to support it;
- Conduct of business during the offer, including the trading in shares and financial instruments of the target;
- Conditions for accepting and/or looking for competing bidders;
- Handling of option and other incentive programs;
- Obligation to call an extraordinary shareholders' meeting of the target company, resignations from the board of directors of the target company, support regarding regulatory filings and registration in the shareholders' register post-acquisition; and
- Confidentiality and communication strategy.

After entering into a transaction agreement, the bidder and the target company, including all of their subsidiaries, qualify as persons acting in concert with respect to the bid. Accordingly, the target company and its subsidiaries are subject to the same rules as the bidder (with the exception of the duty to make an offer). If further parties, such as the main shareholder of the target company, are acting in concert with the bidder, they should become a party to an agreement that sets out certain duties, in particular with respect to trading in shares.

4. Effecting a Takeover

There are essentially two ways to effect a takeover. The first is a voluntary or mandatory takeover bid to the shareholders, be it in the form of a cash offer, a share offer or a mix between the two. The second is a statutory merger, where the shareholders' meetings resolve on merging one company into the other or both companies into a new entity. However, in Switzerland, statutory mergers are rarely used in takeover situations.

4.1 Voluntary public cash takeover bid

A voluntary cash takeover bid is an offer for the purchase of the shares of a Swiss or foreign company with a main listing on a Swiss stock exchange addressed publicly to the shareholders of that company. It needs to be made public through a prospectus. It may be pre-announced through a published pre-announcement that contains the key elements of the bid. The pre-announcement triggers the obligation to publish the prospectus within a period of six weeks. The pre-announcement also has the effect of locking-in the minimum price and requiring the bidder and the target to comply with the takeover rules. A pre-announcement may be required if a transaction that is not yet fully prepared leaks or where the bidder needs additional time to prepare certain aspects of the offer.

A public takeover bid may be made for some or all of the shares of the target. A partial offer is basically irrelevant in the Swiss market. The main reason is that if the partial offer is for a number of shares that takes the bidder over the 33⅓% voting rights threshold and the target company has no opting-out clause in its articles, the offer must be made for 100% of the shares. Additionally, it is substantially easier and less costly to acquire some blocks of shares in the market rather than submit a partial takeover bid.

(a) Price rules

The minimum price rules are applicable to a bid for the shares of a company without an opting-out clause in the articles. An opting-out clause is a clause in the articles of a company that allows it to exclude the application of the mandatory offer rules to that specific company. The rules require that the price offered to the shareholders of the target company is at least as high as:

- *The highest price paid by the bidder in the 12-month period prior to the launch of the bid*. Purchases of derivatives are taken into account by computing the implied price of the share underlying the derivative. This means that a control premium does not need to be paid to a controlling shareholder whose shares are purchased before the bid is launched. Bidders sometimes try to circumvent the minimum price rule by having others purchase shares for them. This does, however, not work as those others are most often deemed to be parties acting in concert with the bidder; and
- *The market price*. If a share is sufficiently liquid, the market price equals the 60-trading day volume weighted average price prior to the launch of the offer. If the shares of the target are illiquid, the price is determined by valuation, whereby the prices paid at the market have a particular weight in that valuation.

A bidder also needs to comply with the best price rule. That rule applies from the launch of the offer until six months after the end of the additional offer period. It applies irrespective of whether there is an opting-out clause or not. Under the rule, if the bidder purchases shares outside of the offer it needs to also offer that same price, if higher than the offer price, to all other shareholders. The rule is particularly dangerous in the following situations:

- *Purchases by parties acting in concert with the bidder* - The best price rule also applies to parties acting in concert with the bidder, i.e., violation of the rule by any party acting in concert with the bidder forces the bidder to increase the offer price. The bidder and all its controlled and controlling entities are parties acting in concert with the bidder. The same applies to the target company, its controlled entities and its controlling entities in the case of a pre-agreed transaction. The bidder must make sure that all such parties fully abide by the best price rule by giving corresponding instructions internally to their treasury departments.

- Purchasing shares from a major shareholder during the offer to secure the bid and granting additional rights, e.g., a gross-up right in case of a subsequent improvement of the offer - Any such additional agreement or right may be regarded as increasing the cash price paid. If that is the case, the value of the additional right or agreement is assessed by an expert and added to the cash price paid, which may then result in a violation of the best price rule requiring the offer price to other shareholders to be increased.

- *Engaging in plans to obtain 100% of the shares subsequent to the offer* - There are several ways to squeeze out remaining minority shareholders after the offer. During the applicability of the best price rule, the bidder needs to be particularly careful not to overpay in subsequent purchases or squeeze-out transactions.

There is no restriction on the currency that may be offered. However, if a currency other than the Swiss Franc is offered, the bidder may have to offer any retail investors the opportunity to exchange the offer price into Swiss Francs at an exchange rate that corresponds to one generally available to large investors only.

(b) Certainty of funds

The law requires that the bid is audited by a special auditor or review body, which is normally one of the large audit companies. Among others, they primarily have to confirm that the bidder has taken those measures that are necessary to ensure that, at the time of settlement of the offer, the necessary funds are available:

- In a self-financed cash bid, the bidder needs to have sufficient own funds. There is no requirement to put these funds into escrow although the review body may require this in certain circumstances. Normally, the review body will look into the cash-flow planning of the bidder to be comfortable with the use of the funds.

- In a bank financed bid, a mere term sheet is not enough. The full financing documentation must be available and signed. Until the bid is settled, a so-called "certain funds period" applies. It limits the conditions precedent and the covenants. Conditions that correspond to offer conditions are generally admissible. Conditions precedent concerning the existence, ability to act and change of control of the bidder are admissible as well. Conditions precedent and covenants that are under the control of the bidder, such as the issue of securities or compliance with certain obligations under the agreements (pari passu clauses, negative pledge clauses, etc.) are also allowed during the certain funds period. Even the substantial deterioration of the bidder's ability to make payments is accepted.

(c) Offer conditions

The bidder's offer may be subject to conditions. Conditions are only admissible if:

- it is in the bidder's interest to set the condition;
- the condition cannot be substantially influenced by the bidder;
- the bidder has made all efforts available to it to fulfil a condition; and
- the condition does not violate any of the general principles of transparency, fairness and equal treatment.

The last requirement in particular has been used by the TOB to scale back the number of admissible conditions. In essence, the following conditions are admissible in voluntary bids:

- *Minimum acceptance level* - For Swiss companies, a company is almost under full control of a shareholder if 66⅔% of its shares are owned by one shareholder (see 3.1(a)). Therefore, this is the acceptance threshold a bidder may set if it starts the bid from zero holding. Of course, it may provide a substantial benefit to set the level at 90% as this allows for a squeeze-out merger. However, such a high threshold would require that the bidder hold about 60% of the target shares already before the offer is launched.
- *Material adverse change clauses* - Material adverse change clauses need to list major consequences to be acceptable, e.g., a 5% reduction in turnover, a 10% reduction in EBIT or EBITDA and a 10% reduction in equity. The trigger event may either be a future event or an unknown past event.
- *Approvals by authorities* - This normally concerns the approval of competition law authorities as well as approvals by authorities that regulate the particular industry of the target, be it in Switzerland or abroad. Typically, one should specifically name these approvals rather than refer to them in general.
- *No prohibition of the offer* - Normally, bidders include a condition that the offer or its settlement has not been prohibited by any court.
- *Amendments to articles of incorporation* - A bidder must make sure that it controls the target company after the offer. Therefore, a bidder will usually put the offer subject to the removal of any transfer restrictions and voting right restrictions in the articles.
- *Entry in the shareholders' register* - To acquire the shares and to be allowed to vote the shares, a bidder needs to be registered with all voting rights in the shareholders' register. Therefore, a bidder will normally make its bid under the condition that the board has approved the registration of the bidder's shares with voting rights in the shareholders' register.
- *Control over the board* - Subsequent to the offer, a bidder may wish to fully control the target company. The bidder may therefore ask that the current board members step down as per the settlement and that new board members are elected subject to the settlement. The alternative is that

sufficient current board members sign agreements with the bidder under which they are obligated to follow the bidder's instructions.

- *No structural changes* - A bidder may also include a condition that aims to limit actions taken by the shareholders' meeting of the target. This includes, for example, open or hidden distributions or disposals of more than 10% of the assets or that influence EBITDA by more than 10%, mergers, demergers, capital increases, new transfer or voting right restrictions.

The first two conditions only last until the end of the offer period, while the other conditions last until the settlement of the offer, if so provided for in the prospectus. Normally, a bidder will provide that the settlement may be postponed if competition authority clearance has not been obtained. A postponement period of up to four months is the most common period agreed to by the TOB. A bidder will usually provide that it is entitled to waive conditions partly or entirely.

4.2 Voluntary public exchange or mixed offer

Instead of cash, a bidder may offer shares or a mix thereof. Mix-and-match offers are also admissible. The offered shares do not have to be listed shares. There are a number of particularities to be taken into account when offering anything other than pure cash:

(a) Price rules

The minimum price rules and the best price rule apply as well. If the shares are listed and sufficiently liquid then the bidder can use the 60-trading day volume weighted average price of the shares offered to comply with the minimum price rules. If that is not the case, they need to be valued by the special auditor. For compliance with the best price rule, the value of the offered shares at the moment the agreement to exchange shares is entered into is relevant.

In case of a partial or full exchange offer, there are two additional price rules which must be complied with:

- *Pre-offer cash purchases rule* - If during the 12-month period before launching the bid, the bidder purchases 10% or more of the equity capital of the company with cash, it is under an obligation to offer a full cash alternative. That cash alternative may be lower than the share alternative as long as it complies with the minimum price rules. The pre-offer cash purchases rule does not apply if the target's articles contain a so-called opting-out clause.
- *Pending offer cash purchases rule* - If, during a bid, the bidder purchases shares for cash, it needs to offer a full cash alternative. Again, that cash alternative may be lower than the share alternative as long as it complies with the minimum price rules.

(b) Certainty of funds

Certainty of funds in exchange offers or for the shares part in mixed offers means that the bidder must have taken the necessary measures to ensure that the required shares can be created. These measures need not have been taken before the bid is launched, but the review body needs to be satisfied that the plans to take those steps are such that they are going to be implemented in time.

(c) Offer conditions

The following are typical additional offer conditions in exchange or mixed offers:

- *Shareholders' meeting to approve the issue of new bidder shares* - In some cases, the board of the bidder has the necessary powers to resolve to issue shares to the target's shareholders. However, a shareholders' meeting of the bidder may also be required. The approval by the bidder's shareholders may be set as a condition of the exchange or mixed offer.
- *Registration and listing of newly issued shares, approval of issue prospectus and admission to trading* - Depending on the origin of the bidder, certain measures may need to be taken and approvals sought so that the bidder's shares can be admitted to trading on a stock exchange. It is admissible to set the granting of these approvals as conditions for the exchange or mixed offer.

4.3 Mandatory offer rules

A shareholder is obligated to submit a mandatory offer if it crosses the 33⅓% threshold, or a higher threshold if there is an opting-up clause in the target company's articles. An opting-up clause is a clause in the articles of a company which moves the mandatory offer threshold to a level not greater than 49%. No obligation to submit a mandatory offer exists if the articles of the target company provide for an opting-out clause as in this case the mandatory offer rules do not apply to the relevant company. There are no creeper rules.

There are a number of exemptions from the obligation to submit a mandatory bid. For example, if shareholders form a group to coordinate a sale of their shares rather than to control a company, they may obtain an exemption even if they have crossed the requisite threshold for making a mandatory offer. There are various other situations in which an exemption may be sought. In each case, the exemption must be obtained before entering into the particular transaction. The TOB is responsible for approving any exemptions.

All shares held by a shareholder, directly or indirectly, or in a group together with others, are aggregated to determine whether or not the mandatory offer threshold has been crossed. A group of shareholders exists if shareholders act together and coordinate their actions with respect to controlling a company. This goes beyond mere discussions with a view to a shareholders' meeting. The boundaries are quite vaguely defined and the TOB looks at each case individually. Therefore, it is important to enter into an agreement early on if there is an intention to coordinate actions in order to avoid triggering the offer threshold.

If a shareholder is under an obligation to submit a mandatory bid, there are some special rules to be observed:

- *Extent of the offer* - The offer must be made to all shareholders holding listed equity securities;
- *Price rules* - The bidder may offer shares, but is under an obligation to offer a full cash alternative to the target's shareholders; and
- *Conditions* - The offer conditions are more limited. Acceptance thresholds do not apply and material adverse change clauses are inadmissible. Conditions that require control to be obtained are admissible.

The typical practice in Switzerland is to buy shares up to 33⅓% or slightly below and then, when the price rules allow for a low offer price, to cross the threshold and submit an offer at the minimum price. By doing so, the bidder just crosses the mandatory offer threshold but only acquires a few shares. After the expiry of the best price rule, the bidder is free to buy as many shares as it wishes in the market without the obligation to submit another bid.

4.4 Duties of the board of directors

Under Swiss law, the board of directors is not the shareholders' agent, but only has responsibility towards the company. It has to act solely in the company's interests. This principle becomes slightly modified in a public takeover scenario:

- The board needs to comment on the bid and, in particular, to consider the bid from the perspective of the shareholders. If it recommends accepting or not accepting the bid, such recommendation has to be made from the shareholders' perspective and not the target company's perspective. Instead of giving a recommendation, the board may also simply list the advantages and disadvantages of the bid. The report of the board needs be true and complete. If a fairness opinion is obtained, it needs to be obtained from an independent and appropriately qualified provider.

- If, due to the situation of the company, it is necessary for the board of directors to sell the target company or where the sale of the company becomes inevitable, the board's duties shift more towards the shareholders. The board is now under an obligation to maximize the price, but is not obligated to arrange for a bidding competition.

Within the framework described, there is no difference between the duties of the board in a hostile offer or in a recommended offer. The only difference is at the beginning of an approach when a bidder may contact the board with a high indicative price, which motivates the board to allow such bidder to conduct due diligence. If the board does so, the bidder may, subsequent to the due diligence, try to renegotiate a lower offer price. That creates a difficult situation for the board as, in many instances, the only way to control a takeover bid is by not allowing a due diligence. Thus, the board should, prior to allowing a due diligence to take place, already be thinking about its duty to obtain a high offer price and to try to secure that price before allowing a due diligence.

Aside from the above obligations, there are a number of further duties of the board of directors that apply after the launch of the takeover bid. In particular, the board of directors must treat all bidders equally, which has an impact on granting access to due diligence and paying break fees. The board must report defense actions it intends to take and is barred from taking certain defense measures, in particular those that entail a substantial change to the company's capital structure, the remuneration of directors or the business of the target company.

4.5 Mergers

A takeover may also be effected through a statutory merger, where either:

- The two companies involved form a new entity and combine into that entity; or

- One company survives and takes over all the assets and liabilities of the other company by granting the other company's shareholders shares in the surviving entity.

Those transactions are possible both within Switzerland and, if the foreign law allows, cross-border. Cross-border mergers often pose a challenge because one needs to properly consider all applicable laws and be aware of the risk of undesired tax consequences. In pure Swiss transactions statutory mergers are uncommon. The disadvantage of the merger is that shareholders have appraisal rights, i.e., they may dispute the exchange ratio offered relating to the merger. Although the success rate of shareholders that have asked for an appraisal is very low, that right nevertheless leads to uncertainty that may last for quite a while. In addition, offering only cash requires a super-majority of 90%. As a consequence, such mergers are much less common than public takeover bids.

5. Timeline

The table below sets out a typical timeline for a friendly public takeover bid in Switzerland. It includes the major steps only and may vary a lot. It applies to both purchase and exchange bids as well as combinations thereof. Mergers proceed on a different timeline and are not discussed further here.

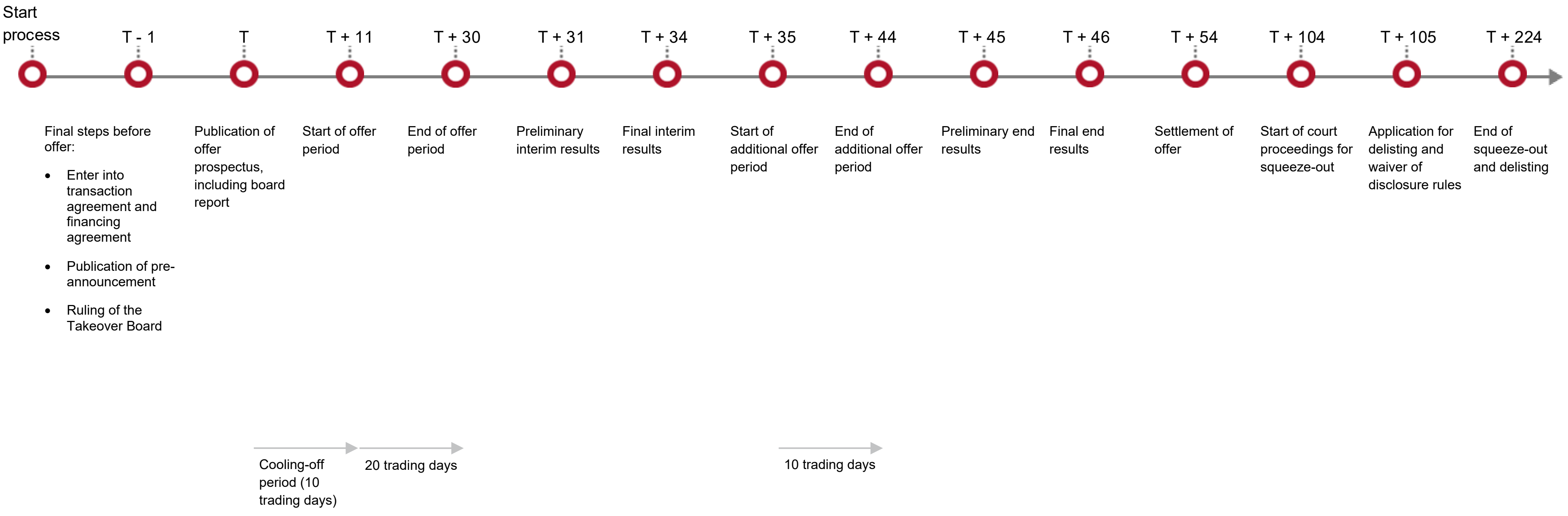
Step	Timing (in trading days)
Personal preparation: extent of personal preparation depends on necessity and takeover tactics	
Contacting target company and entering into confidentiality and standstill agreement	
Preparation of the offer: • due diligence • financing documentation • transaction documents • ensuring immediate control after the takeover • approval process with the special auditor (review body) • approval process with the TOB	T_{-30} to T_{-1}
Final steps before the offer: • entering into transaction agreement • entering into financing documentation • ruling of the TOB	T_{-1}
Publication of the offer prospectus, including the board report as part of the prospectus	T_0
Cooling-off period	T_1 – T_{10}
Offer period of 20 trading days	T_{11} – T_{30}
Preliminary interim results	T_{31}
Final interim results	T_{34}
Additional offer period of 10 trading days	T_{35} – T_{44}
Preliminary end results	T_{45}
Final end results	T_{46}
Settlement of the offer	T_{54}

Step	Timing (in trading days)
Start of court proceedings for squeezing out minorities	T_{104}
Application regarding delisting and waiver of disclosure rules	T_{105}
End of squeeze-out proceedings and delisting	T_{224}

A competing bid may change the timeline. Such a bid needs to be published until the last trading day of the offer period. The offer period of the competing bid ends on the same day as the first bid. However, if that would lead to an offer period shorter than 10 trading days, the offer period of the first bid is extended. Both bids may subsequently be amended. Any such changes need to be published five days before the end of the offer period at the latest. Starting from the publication date of the revised offer, the offer period needs to remain open for an additional term of 10 trading days.

Set out below is an overview of the main steps for a friendly public takeover in Switzerland.

Friendly public takeover (indicative timeline)



Start process	
T - 1	Final steps before offer: • Enter into transaction agreement and financing agreement • Publication of pre-announcement • Ruling of the Takeover Board
T	Publication of offer prospectus, including board report
T + 11	Start of offer period
T + 30	End of offer period
T + 31	Preliminary interim results
T + 34	Final interim results
T + 35	Start of additional offer period
T + 44	End of additional offer period
T + 45	Preliminary end results
T + 46	Final end results
T + 54	Settlement of offer
T + 104	Start of court proceedings for squeeze-out
T + 105	Application for delisting and waiver of disclosure rules
T + 224	End of squeeze-out and delisting

Cooling-off period (10 trading days)

20 trading days

10 trading days

6. Takeover Tactics

A bidder should observe two simple rules for a successful takeover in Switzerland:

- Move quickly as soon as it contacts the target or publishes the bid; and
- Offer a fair and reasonable price.

6.1 Acting on a fast timeline

(a) Preparation before contacting the target

By far the biggest risk in a public takeover is a competing bid. The bidder may either lose out to a competing bid or risk over-paying if the price is driven up by a competing bidder.

Normally, the competing bidder will need several weeks to assess the bidding opportunity. As seen in the timeline above, the tightest (normal) timeline gives a competing bidder a window of 30 trading days, or roughly six weeks, to publish the competing bid. Under normal circumstances, this is not sufficient to assess and launch a competing bid, which needs to be published at the end of the offer period of the first bid. However, a 10-week window may just be enough. These four weeks may make the difference.

The bidder should always be aware that the target company's board may not be primarily interested in organizing a bidding competition. In fact, the board may wish to avoid a takeover bid entirely.

Unfortunately, this knowledge does not help a lot. It just means that one should only present a takeover bid as unavoidable to the target company once one has done all the home work. If a bidder can persuade a target company that a takeover is unavoidable, the board's reluctance to accept a takeover bid may fade away. However, this does not mean that they will now full-heartedly welcome the bidder, rather that they may wish to organize a bidding competition since their interest is now to obtain the best price for the shareholders.

Ultimately, the conclusion is that a bidder should confidentially prepare the bid and proceed with the due diligence based on publicly available information without disclosing any takeover intentions to the target. In certain instances, it may be appropriate to begin discussions with the target to get an impression of its position regarding a business combination. A bidder should present a proposal to the target only after the bidder is fully prepared.

Discretely preparing a bid is also sensible to avoid the application of the "put up or shut up" rule, which may require certain decisions to be made before the bidder is ready. Under this rule, the bidder could be forced to either submit a bid or refrain from doing so for a period of six months. The rule will only apply where there is confusion in the market as a result of speculative comments by the possible bidder. Therefore, as long as the bidder remains entirely silent or announces its intentions in the correct way, the risk that the "put up or shut up" rule applies is reduced.

(b) Use of standard and safe approaches increases speed

Speed may also be jeopardized by employing risky approaches, such as earn-out structures for major shareholders that sell before the public takeover or put- and call-option structures for management in an MBO if management has also committed to sell shares. Such structures are not prohibited, but they are more prone to challenges which may slow down or hinder the efficient execution of the transaction.

(c) Be wary of target companies taking away control over the bid

When approaching a target, it is important to put a confidentiality agreement in place as soon as possible (see 3.2(c)(i)). Target companies often try to add a standstill clause into a confidentiality agreement and a clause that prevents the submission of the bid without the target's consent or attempts to lock in a certain price. A bidder should be wary of such attempts:

- A bidder should try to avoid the consent clause and the price clause, although their effectiveness is limited. Once a bid is submitted to the shareholders, the bidder is bound and it is irrelevant if it was made in violation of the consent clause. Locking in the price only works effectively if the agreement is set up such that it works in favor of the shareholders and gives them the right to enforce the agreement directly.
- The standstill clause on the other hand is most often acceptable, for the following reasons:
    - Stake building is possible as long as the target has not been contacted, since Swiss laws allow the bidder to trade based on the information that it intends to submit a takeover bid. However, trading target shares based on the knowledge that the target board is receptive of the bid or based on other price relevant information is not allowed. This needs to be factored in if the bidder wishes to purchase a stake shortly before the offer is launched. Such purchase is allowed as long as it does not exploit price sensitive information.
    - In addition to the limitations imposed by insider trading, stake building is also limited by disclosure obligations (see 3.2(b)). Therefore, unless one or several large blocks can be purchased, stake building prior to the launching of the bid is not helpful. However, if a large stake can be purchased, the uncertainty in the takeover bid can often be removed and speed becomes less of a factor.

(d) Hostile approaches

Switzerland has seen a number of hostile bids, some ending in favor of the original bidder, some in favor of a competing bidder. Typically, the target company was only successful in defending against a hostile bid when the price was insufficient. Hostile bids can be successful in Switzerland, but there are also some drawbacks:

- Generally, hostile bids are not well received in the Swiss business community. This reputational issue needs to be considered carefully, particularly with respect to the employees. Nevertheless, many bidders have been able to properly manage the risks entailed, profiting from the fact that while the Swiss business community does not like a hostile approach, it also dislikes a defensive battle.
- In the case of a bid that is not discussed in advance with the target company, it is not possible to get pre-approval from the TOB.
- In certain instances, shareholders will have to vote on removing transfer or voting right restrictions to enable the bid. A shareholders' meeting is called by

the board or possibly upon the request of shareholders holding a specified number of shares. If the offer is submitted for such company, the board may refuse to call the shareholders' meeting and, in such case, a shareholder with a sufficient holding of shares may have to go to court to force a shareholders' meeting to be called. However, the likelihood of the board refusing to call a shareholders' meeting in case of an offer with a good price is rather low, particularly as there is risk of both negative publicity and liability towards shareholders.

6.2 Paying a fair and reasonable price

Besides the necessity of speed, offering a fair and reasonable price is the second principle to observe. A bidder will also wish to avoid overpaying and so it is important to look into aspects that help to determine the price:

- *The support of the board* - For a board, it is extremely difficult to defend a company against a takeover bid if the price is good. Any board will have to consider what happens if it becomes public that a good price was confidentially made and the shareholders learn that the board did not support the offer. In many instances, a board will also not be inclined to engage in a bidding process as this inevitably means that independence is lost and there is a good chance of a leak. The board will therefore have a tendency to defend the target company by explaining that its own strategy, if valued properly, will beat the price offered by the bidder.

- *The ordinary shareholders' votes* - To control a company, it is often sufficient to get across the 50% threshold or even obtain fewer shares (see 3.1(a)). In particular, by crossing the 50% threshold, the bidder may elect all the directors and executives, and determine strategy and daily management. Experience shows that if the bidder gets a majority of the shares tendered during the offer period, it also gets across at least the two-thirds super-majority line in the additional offer period, which enables the shareholder to effect a delisting. The shareholders tendering are then not interested in remaining in a (potentially) delisted company ruled by one large shareholder who provides only minimal information. Many shareholders, such as investment funds, may not even stay invested in the stock. To get across the 50% threshold, a bidder only needs to offer a price that is acceptable to 50% of the shareholders.

- *Super majority shareholders' votes* - In certain instances, the success of the public takeover requires the removal of transfer restrictions or of voting rights restrictions. A number of Swiss companies limit the voting rights of shareholders that hold more than a certain percentage of shares. The bid is then made conditional on a shareholder vote to remove these restrictions. According to the law, the removal of such restrictions only requires a simple majority approval. However, the restrictions themselves may operate such that more than a simple majority of shareholders is required. Additionally, a number of companies provide that a super majority needs to approve the removal of those limiting clauses. Therefore, in case of a target company with these restrictions, the price offered by the bidder needs to accommodate the majority required to remove the limiting clauses.

6.3 Alternative tactics

Besides the two basic principles - speed and price - bidders often think about applying other deal protection methods, such as agreeing on exclusivity, break fees or tender agreements with larger shareholders. These techniques work to a certain extent, but are generally not very effective. Taking each of these in turn:

- *Exclusivity* - Exclusivity does not protect against a better competing offer. If the target company receives a proposal with a better offer price, the board is under a fiduciary duty to enter into discussions with the competing bidder and allow due diligence to the extent granted to the first bidder.
- *Break fees* - Break fees may cover costs, but nothing more. Otherwise, they are in conflict with the fiduciary duties of the board. Additionally, as all bidders need to be treated equally, break fees must be offered to all bidders and not just the first bidder.
- *Tender agreements* - Tender agreements are valuable in making sure that larger shareholders do not jeopardize a transaction. However, they become ineffective as soon as a competing bid is published. Any shareholder may then freely choose between the competing bids and may even withdraw tenders already made, irrespective of any tender agreements.

One needs to be careful with voting agreements and other arrangements with existing shareholders. Such agreements may make the contracting party a party acting in concert with the bidder. Therefore, their behavior is fully attributed to the bidder and may trigger a number of disclosures. In the worst case, the bidder may be forced to submit a mandatory bid (see 4.3).

6.4 Defense mechanisms employed

The above also illustrates the defense mechanisms employed by Swiss companies. There are usually no hard defense mechanisms in place, such as the right of a related company to purchase substantial assets of the target company.

Usually, defense mechanisms, such as voting rights or transfer restrictions, limitations on deselecting the board, etc., may be removed by a majority or a super-majority vote. The difficulty with these clauses is that if the board vigorously defends the company, a bidder needs to factor in the time required to enforce the calling of a shareholders' meeting in the courts. That may take between three and eight months. The bidder also needs to make sure that there are larger shareholders supporting the bid and willing to take the appropriate court actions, unless the bidder has already purchased sufficient shares to request a shareholders' meeting. The defense of Swiss companies therefore works on the level of reputation and the fear that a bid may be delayed by court proceedings or otherwise.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 In general

If, following the takeover bid, the bidder (together with the persons acting in concert) does not hold 100% of the target company, there are several options available in order to achieve full control over the target company. These options depend on the stake in the target company that the bidder was able to acquire.

7.2 Ordinary squeeze-out

If the bidder has acquired a shareholding of more than 98% of the voting rights in the target, it may, within three months after the end of the additional offer period, initiate court proceedings to cancel the equity securities held by the remaining public shareholders. In the course of the proceeding, the shares of the minority shareholders are cancelled and reissued to the bidder against payment of the offer price or fulfilment of the exchange offer in favor of the minority shareholders whose shares are cancelled. The offer price is not re-evaluated. The cancellation proceedings can be finalized within 4-12 months after they have been initiated.

There is a risk that a delisting of the target company before the end of the ordinary squeeze-out bars the bidder from claiming the squeeze-out. Therefore, bidders usually delay the delisting until the end of the squeeze-out.

7.3 Squeeze-out merger

If the bidder has acquired at least 90% of the voting rights in the target company, it may conduct a squeeze-out merger in which the target company is either merged into the bidder or one of its affiliates. When determining the cash payment to the minority shareholders, the bidder has to observe the best price rule if the merger contract is entered into within six months after the end of the additional offer period. Therefore, a squeeze-out merger will, in practice, rarely take place before the end of this six-month period. Furthermore, the fairness of the cash payment to be made following the squeeze-out merger is subject to court review if such a review is requested by a minority shareholder. The delisting process with regard to the target company can be initiated in parallel to the squeeze-out preparations, and a delisting can take place concurrently with the completion of the merger.

7.4 Asset deal

In case the bidder acquired more than 66⅔% of the voting rights in the target, it may convene an extraordinary shareholders' meeting of the target and resolve on an asset deal which leads to the liquidation of the target. It is crucial to review the potential tax consequences of an asset deal in detail. While it is likely that the transaction can be structured in a tax efficient way from the perspective of the bidder, this will not necessarily be possible for the remaining minority shareholders.

8. Delisting

A delisting of the shares requires a two-thirds majority at the shareholders' meeting.

The delisting procedure is initiated by filing an application with the relevant stock exchange at least 20 trading days prior to the announcement of the delisting. The time from the announcement of the delisting and the last trading day is fixed by the relevant exchange and is between three and 12 months. If the announcement of the intention to delist the target company is made in the offer prospectus, the term between the official announcement of the delisting and the effective delisting is usually shortened to five trading days.

9. Contacts within Baker McKenzie

Matthias Courvoisier and Yves Mauchle in the Zurich office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Switzerland.

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Taiwan

1. Overview

The public M&A market in Taiwan has continued to be active over the last few years. The major players, however, have shifted from multinational companies to local Taiwanese and PRC-based companies. Most of the high profile public M&A deals in the market relate to companies in the technology and financial industries. A tender offer followed by a cash merger or a share swap is one of the most commonly used transaction structures with respect to public M&A in Taiwan. Although tender offers may be used to accomplish hostile takeovers in other jurisdictions, given that hostile takeovers are historically rare in Taiwan, tender offers are usually used as a friendly takeover tool here. Nevertheless, a few acquirers have recently tried to accomplish hostile takeovers through a tender offer. Their takeover tactics and the anti-takeover defenses adopted by the target drew a large amount of attention in the market and similar transactions are expected to appear in the future.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Taiwan's law relating to public M&A can be found in:

- The Securities Exchange Law ("**SEL**");
- The Company Act;
- The Business Mergers And Acquisitions Act ("**M&A Act**");
- The Financial Institutions Merger Act; and
- Regulations Governing Tender Offers for Purchase of the Securities of a Public Company ("**Tender Offer Regulations**").

Existing shares of a company listed on the Taiwan Stock Exchange ("**TSE**") or the Taipei Exchange ("**TPEx**") can be purchased by regular trading in the market during trading hours, odd-lot trading, after-hour fixed-price trading, block trading, auction, and tender offer. One may also subscribe for new shares of these listed companies by public offering and private placement.

While acquisition of the shares of a TSE- or TPEx-listed company through a securities exchange is feasible, an acquisition of 20% or more shares of a public company within 50 days can only be carried out through a tender offer. Article 43-1 of the SEL and the Tender Offer Regulations are the main legislative provisions relating to public takeovers. The Tender Offer Regulations prescribe the circumstances under which a buyer can make a tender offer and provide the related regulations to conduct it.

The offeror may launch a tender offer to acquire up to 100% of the shares of a public company and thus bypass the TSE or TPEx, but they may be conducted only after the tender offer has been reported to the Financial Supervisory Commission of Taiwan ("**FSC**") and publicly announced (see 2.3).

Alternatively, a company may acquire 100% of the outstanding shares of a target public company by issuing new shares, cash, or other assets pursuant to Article 29 of the M&A Act, and the target company will become a 100% held subsidiary company of the acquiring company.

In addition to a share purchase deal, under Article 316 of the Company Law and Articles 18-21 of the M&A Act it is possible to effect a statutory merger of two companies limited by shares regardless of whether they are public companies or not. The surviving company can either be one of the existing companies or it may be a new company. In either case, the existing company or the new company after the statutory merger must be a company limited by shares.

The Financial Institutions Merger Act governs mergers between banking enterprises, securities and futures enterprises, institutions covered by the insurance enterprise and other institutions approved by the competent authority.

2.2 Governmental prior approval - Foreign investments regulation

Except for certain specific sensitive activities as listed below, foreign investments are generally not restricted in Taiwan but are subject to the prior approval from the Department of Investment Review, Ministry of Economic Affairs of Taiwan if a foreign investor wants to acquire 10% or more of the shares of a Taiwan listed company. The approval must be obtained before the final completion of the transaction.

The following are considered sensitive activities:

- activities likely to jeopardize public order, public safety or national defense interests
- activities relating to research, manufacture or sale of arms or weapons, munitions, explosive powder or other explosive substances
- operation of transportation networks and services
- operation of an establishment that is strategic to Taiwan national defense
- protection of public health

2.3 Other rules and principles

While the aforementioned legislation contains the main legal framework for public M&A in Taiwan, there are a number of additional laws and regulations that are to be taken into account, such as:

(a) Articles 22-2, 25 and 43-1 of the SEL relating to the disclosure of significant shareholdings in listed companies;

(b) Articles 157-1 and 155 of the SEL relating to insider trading and market manipulation;

(c) "Regulations Governing Information to be Published in Tender Offer Prospectuses" relating to the prospectus to be published when there is an offer of securities to the public;

(d) The general rules on the supervision and control of the financial markets; and

(e) The rules and regulations regarding merger control. These rules and regulations are not discussed further herein.

2.4 Supervision and enforcement by the Financial Supervisory Commission of Taiwan

Tender offers are subject to supervision and control by the FSC. The FSC is the principal securities regulator in Taiwan. It promulgates regulations pursuant to the SEL that pertain to public companies, i.e., those companies which have been approved by the FSC to publicly issue their shares and listed companies on the TSE or the TPEx. The objective of the FSC regulations is to prevent the abuse of listing rules and the circumvention of initial public offering requirements. The regulations provide guidelines for mergers between listed companies as well as mergers between private companies and listed companies.

The FSC has a number of legal tools that it can use to supervise and enforce compliance with the tender offers rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in the case of non-compliance.

2.5 General principles

The following general principles apply to public takeovers in Taiwan. These regulations are provided in the SEL and Tender Offer Regulations:

(a) In order to treat all shareholders equally, a tender offeror shall offer the same consideration as well as other terms and conditions to all shareholders in the tender offer, and may not modify the acquisition conditions, except for raising the offer price, changing the maximum number of shares to be acquired and extending of the tender offer period. Moreover, the tender offeror may not enter into an agreement or covenant with a shareholder of the target company entitling such shareholder to any special rights as a result of the shareholder's participation in the tender offer.

(b) After receiving tender offer documents from the offeror, the target company shall promptly form a review committee to conduct a review and to comment on the fairness and reasonableness of the tender offer conditions, verify identity and financial condition of the Offeror and reasonableness of the sources of the tender offer funds and then publicly announce the results of such review within 15 days to enable the shareholders of the target company to decide on the offer.

(c) A tender offeror shall report to the FSC and announce the tender offer, together with related documents, prior to the commencement date of the tender offer. The filing documents shall be reviewed by an attorney, and a lawfully prepared attorney's opinion shall be provided. If approvals or effective registration with the FSC or any other competent government authority is required, the attorney's opinion shall also cover such matters. The tender offeror shall report to the FSC and publicly announce the result of the tender offer within two days after the tender offer period expires.

(d) During the period from the determination date of a tender offer to the reporting and public announcement date(s), any person who becomes aware of any information relating to that tender offer due to their professional duties or for any other reasons shall keep such information confidential.

2.6 Proposed reforms

The current Tender Offer Regulations were amended in December 2023 and we do not foresee any material reform to takeover regulation in Taiwan in the near future.

3. Before A Tender Offer

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Taiwan listed corporation:

Shareholding	Rights
One share	• The right to attend and vote at general shareholders' meetings.

Shareholding	Rights
	• The right to obtain a copy of the documentation submitted to general shareholders' meetings. • If the board of directors decides, by resolution to commit any act in violation of any law, regulation or the company's articles of incorporation, any shareholder who has continuously held shares of the company for at least one year may request the board of directors to discontinue such act.
1%	• The ability to nominate the candidates for directors. • The right to propose an agenda item in the annual general shareholders' meetings.
1%, continuously held for at least six months	• The right to request in writing for the supervisor(s) of the company to institute, for the company, an action against a director of the company. • The ability to apply to the court for appointment of an inspector to inspect the current status of business operations, the financial accounts and the property of the company.
3%	• The ability to institute a lawsuit for a judgment to discharge the director who has, in the course of performing their duties, committed any act resulting in material damages to the company or in serious violation of applicable laws and/or regulations. • The ability to convene a shareholders' meeting after obtaining an approval from the competent authority when the board of directors fails or cannot convene a shareholders' meeting on account of share transfer or any other causes.
3%, continuously held for at least six months	• The ability to apply to the court for an inspection of the company's business and property when deemed necessary in view of the state of the company's property.
3%, continuously held for at least one year	• The right to request the board of directors to call a special shareholders' meeting by filing a written proposal. • The ability to apply to the court for removal of the liquidator.
10%, continuously held for at least six months	• The right to apply to the court for reorganization in the event that a company which publicly issues shares or corporate bonds suspends its business due to financial difficulty or there is a perceived risk of suspension but with the possibility for the company to be reconstructed or rehabilitated. • The right to apply to the court for a ruling for the dissolution of the company in the event of an apparent difficulty in the operation of a company or serious damage.

Shareholding	Rights
50%, continuously held for at least three months	The right to call for a shareholders' meeting of the company.

3.2 Restrictions and careful planning

Taiwanese law contains a number of rules that already apply before a tender offer is announced. These rules impose restrictions and hurdles in relation to prior stake building by a tender offeror. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a candidate tender offeror intends to start up a process that is to lead towards a tender offer.

3.3 Insider dealing and market abuse

Before, during and after a tender offer, the normal rules regarding insider trading and market abuse remain applicable. For further information on the rules on insider trading and market abuse (see 6.3). The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors is prohibited. In addition, the rules on the prohibition of insider trading prevent a potential tender offeror that has inside information regarding a target company from launching a tender offer.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a tender offer.

Pursuant to these rules, if a potential tender offeror starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure threshold in Taiwan is 5%. In addition, public companies are required to disclose to the market the identity and the shareholding of any shareholder who owns a 10% stake thereof on a monthly basis.

When determining whether a threshold has been passed, a potential tender offeror must also take into account the voting securities held by the parties with whom it acts in concert (see 3.9). The parties could also include existing shareholders of the target company with whom the potential tender offeror has entered into specific arrangements.

3.5 Disclosures by the target company

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all material information. For further information on material information, see 6.1 below.

3.6 Announcements of a tender offer

According to the Tender Offer Regulations, no one can launch a tender offer before submitting a tender offer report to the FSC and making a public announcement. The tender offeror shall not make an announcement on the proposed tender offer before submitting the tender offer report to the FSC.

3.7 Early disclosures – Put-up or shut-up

Under Taiwanese law, the disclosure of material information shall follow the Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities and the Taipei Exchange Procedures for Verification and Disclosure of Material

Information of Companies with TPEx Listed Securities. There is no early disclosure requirement specifically designed for the tender offer, and there is no sanction mechanism to force a person to make an announcement as to whether or not they intend to carry out a tender offer. This is also known as the put-up or shut-up mechanism.

3.8 Due diligence

The tender offer rules in Taiwan do not prohibit a prior due diligence from being organized. In practice, after the tender offeror and the major shareholders of the target company reach a certain consensus on the sales of shares, the major shareholder will usually procure the target company to allow a prior due diligence or pre-acquisition review by the tender offeror. Due to the potential risk that the tender offeror may obtain insider information before the tender offer is made, such due diligence is usually done for the purpose of confirming the publicly disclosed information.

3.9 Acting in concert

With respect to the Taiwanese tender offer rules, persons "act in concert" if they acquire the shares of the target company for a common purpose by means of a contract, agreement, or other form of meeting of minds.

4. Effecting a Takeover

There are two main forms of tender offers in Taiwan:

- a voluntary tender offer – a person voluntarily makes an offer for the securities issued by the target company bypassing the TSE or the TPEx; and
- a mandatory tender offer under the SEL – triggered as soon as any person, whether acting independently or in conjunction with another person or persons, intends to acquire 20% or more of the total issued and outstanding shares of a public company within a period of 50 calendar days.

4.1 Voluntary tender offer

(a) The tender offeror is free to purchase the securities of a public company bypassing the TSE or the TPEx only after the tender offer has been reported to the FSC and publicly announced, except under the following circumstances:

  (i) The number of securities proposed for tender offer by the tender offeror plus the total number of securities of the public company already obtained by the tender offeror and its related parties do not exceed 5% of the total number of voting shares issued by the public company.

  (ii) The securities purchased by the tender offeror through the tender offer are securities of a company of which the tender offeror holds more than 50% of the issued voting shares.

  (iii) Other circumstances in conformity with the regulations prescribed by the FSC.

(b) The tender offeror is, in principle, free to determine the price and form of consideration offered to the target shareholders:

(c) The form of the consideration may be cash or non-cash within the following scope:

  (i) Domestic securities that are either TSE or TPEx listed pursuant to the provisions of the SEL. The scope of foreign securities eligible as consideration shall be as separately prescribed by the FSC.

(ii) If the tender offeror is a public company, stocks or bonds offered and issued thereby. If the tender offeror is a foreign company, the range of stocks or bonds offered and issued that are eligible as consideration shall be as separately prescribed by the FSC.

(iii) If the tender offeror is a public company or foreign company, other property of the tender offeror – The tender offeror may decide the offer price at its discretion. However, the tender offeror shall include an appraisal by an independent expert of the reasonableness of the cash price calculation or share exchange ratio of the tender offer consideration in the prospectus.

4.2 Mandatory tender offer

- A mandatory tender offer is triggered as soon as any person, whether acting independently or in conjunction with another person or persons, intends to acquire 20% or more of the total issued and outstanding shares of a public company within a period of 50 calendar days.
- The main exceptions to the mandatory tender offer obligation include the situations where:
  - The transfer of shares is between related parties.
  - Shares obtained are under the Taiwan Stock Exchange Corporation Regulations Governing Auction of Listed Securities by Consignment.
  - Shares obtained are under the Taiwan Stock Exchange Corporation Rules Governing Purchase of Listed Securities by On-Market Tender Offer or under the Taipei Exchange Rules Governing Purchase of OTC Securities by On-market Tender Offer.
  - Shares are obtained by designated persons satisfying the qualifications prescribed by the competent authority which is formerly held by the directors, supervisors, managerial officers, or shareholders holding more than 10% of the total shares of the target company.
  - Implementing a share exchange under the Company Act, Article 156-3, in which new shares are issued to serve as the consideration for acquiring the shares of another public company.
  - Implementing a share swap under the M&A Act to obtain shares of another public company.
  - Other conditions in conformity with FSC regulations.
- In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary tender offer.

5. Timeline

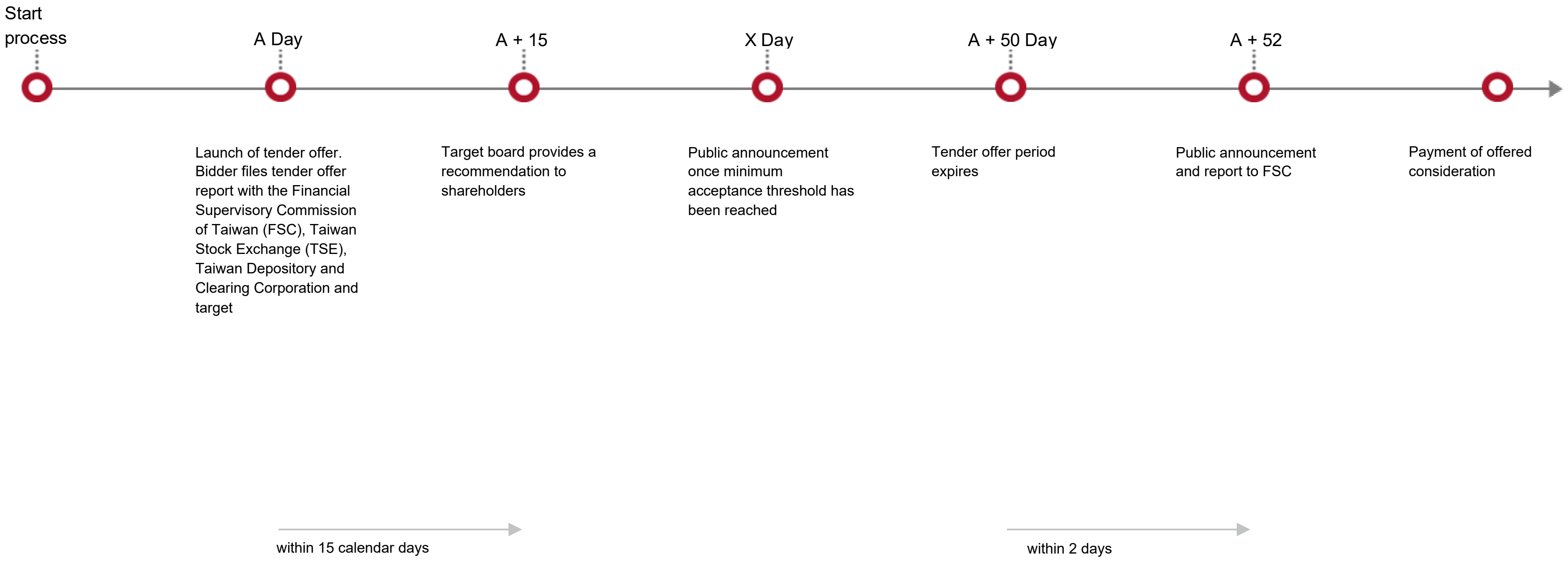
As a general rule, the tender offer process for a mandatory tender offer is the same as the process that applies to a voluntary tender offer.

The table below contains a summarized overview of the main steps of a typical tender offer process under Taiwanese law.

Step	
1.	Preparatory stage: • Preparation of the tender offer by the tender offeror (study, due diligence, financing, draft prospectus). • The tender offeror approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders. • The tender offeror engages a tender offer agent, which is usually a securities firm.
2.	Launching of the tender offer: The tender offeror files the tender offer report with the FSC, TSE, Taiwan Depository and Clearing Corporation and the target. The filing must contain the tender offer prospectus, legal opinion from local counsel, tender offer agent service agreement, fairness opinion on the tender offer price, and proof that the tender offeror has the ability to perform payment of the tender offer consideration.
3.	After receipt of the tender offeror's tender offer report, the board of the target must form a review committee comprised of independent directors to provide a recommendation to shareholders. Such recommendation should be announced by the target within 15 calendar days after receipt of the report.
4.	Public announcement regarding achievement of minimum acceptance threshold.
5.	Public announcement and report to the FSC on completion of the tender offer within two days after tender offer period expires.
6.	Payment of the offered consideration by the tender offeror (as per the announcement on completion of tender offer).

Set out below is an overview of the main steps for a mandatory tender offer in Taiwan.

Mandatory tender offer (indicative timeline)



Start process

A Day

Launch of tender offer. Bidder files tender offer report with the Financial Supervisory Commission of Taiwan (FSC), Taiwan Stock Exchange (TSE), Taiwan Depository and Clearing Corporation and target

A + 15

Target board provides a recommendation to shareholders

X Day

Public announcement once minimum acceptance threshold has been reached

A + 50 Day

Tender offer period expires

A + 52

Public announcement and report to FSC

Payment of offered consideration

within 15 calendar days

within 2 days

6. Takeover Tactics

6.1 Inside information

A Taiwanese company is obligated to immediately disclose to the public all "material information" that relates to it, including all material changes in information that has already been disclosed to the public. Such material information is usually deemed as inside information under the insider trading regime.

- "**Inside information**" means information that will have a material impact on the price of the securities of the issuing company.
- The phrase "**information that will have a material impact on the price of the securities**" shall mean information relating to the finances or businesses of the company, or the supply and demand of such securities on the market, or tender offer of such securities, the specific content of which will have a material impact on the price of the securities, or will have a material impact on the investment decision of a reasonably prudent investor.
- The scope of the material information is prescribed in the Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities and the Taipei Exchange Procedures for Verification and Disclosure of Material Information of Companies with TPEx Listed Securities.

6.2 In the event of a public takeover bid

Under Taiwanese law, the tender offer cannot be launched until the tender offeror submits its report to the FSC and makes a public announcement.

6.3 Insider dealing and market abuse

The basic legal framework regarding insider dealing and market abuse under Taiwanese law is set forth in the SEL.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a tender offer, albeit that during a tender offer additional disclosures apply in relation to trading in listed securities

6.4 Common anti-takeover defense mechanisms

There are only limited anti-takeover defense mechanisms that a Taiwanese company may take after the tender offer is launched. The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a tender offer. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a tender offer.

Mechanism	Assessment and considerations
1. Share Exchange (white knight and poison pill) Issue new shares to exchange the shares of the "friendly company" which will enlarge the total outstanding shares of the target company and result in cross holding of	• Requires only the approval of the board of directors (approval vote of a majority of at least two-thirds of the directors present) as long as the number of the new shares to be issued does not exceed the authorized capital of the company.

Mechanism	Assessment and considerations
the target company and the friendly company.	
2. Share buyback Buy back shares to "maintain the company's credit and shareholders' equity".	• Requires only the approval of the board directors (approval vote of a majority of at least two-thirds of the directors present). • The number of shares bought back under the preceding paragraphs may not exceed 10% of the total number of issued and outstanding shares of the company. • The total amount of the shares bought back may not exceed the amount of retained earnings plus premium on capital stock plus realized capital reserve.
3. Sale of crown jewels An arrangement affecting the assets of, or creating a liability for, the company which is triggered by a change in control or the launch of a tender offer.	• Requires prior approval by the general shareholders' meeting (by a majority vote of the total shares present where a quorum represents two-thirds of the total outstanding voting shares or, if the aforementioned quorum is not met, by two-thirds of votes of the total shares present where a quorum represents a majority of the outstanding voting shares).
4. Private placement of equity securities Offering equity securities through private placement prior to the tender offer in favor of "friendly person(s)" (without preferential subscription rights of the shareholders) who can exercise the warrants at their option and subscribe for new shares.	• Requires prior approval by the general shareholders' meeting (by two-thirds of votes of the total shares present where a quorum representing a majority of the outstanding voting shares). • The terms and condition of the equity securities (including the exercise price) and the reasonableness thereof must be disclosed to the shareholders before the aforementioned general shareholders' meeting.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

There is no squeeze-out mechanism that applies to tender offers under Taiwanese law. Following the tender offer bid, the tender offeror (together with the persons with whom they act in concert) cannot, regardless of the percentage of the shares the tender offeror obtained after the tender offer, force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to the tender offeror at the price offered in the tender offer.

7.2 Sell-out

There is no sell-out right for the shareholders that did not accept the tender offer bid under Taiwanese law.

7.3 Squeeze-out followed by a merger

If a shareholder is opposed to the proposed merger, they may request the company to buy back their shares at "fair price". The company and shareholder may reach an agreement about such fair price. In case no agreement is reached, the company shall apply to the court for a ruling on the fair price on behalf of all the dissenting shareholders. All the expenses of the application procedure shall be borne by the company.

7.4 Restrictions to acquiring securities after the takeover bid period

If the tender offeror fails to acquire the proposed number of shares within the tender offer period or suspends the tender offer as approved by the competent authority, the tender offeror may not, within one year therefrom, carry out another tender offer on the same target, unless it has legitimate reasons and has obtained approval from the competent authority.

8. Delisting

If the acquirer is a foreign entity or its 100%-owned Taiwanese subsidiary, the Department of Investment Review may oppose any transaction that would result in the delisting of a Taiwanese company that is listed on TSE or TPEx. This is in order to protect the interests of investors. Other than the above circumstance, as long as the Taiwanese listed company has obtained two-thirds of total shares voting for the voluntary delisting or two-thirds of the total shares voting for a merger or being a 100%-owned subsidiary by means of share swap, the company may delist from the TSE or TPEx. In the case of voluntary delisting, the directors, other than independent directors, who expressed consent at the relevant board of directors' meeting to submit the delisting application proposal to the shareholders' meeting for approval will then be jointly and severally liable to purchase the shares of the company from the shareholders.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Michael Wong and Gwyneth Gu in the Taipei office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Taiwan.

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Thailand

1. Overview

Thailand has different laws and regulations governing public M&A activities depending on the investor's activities. These activities are based on:

- the status of the corporate entities involved;
- the types of acquisition methods; and
- the industry of the target business.

2. General Legal Framework

2.1 Main legal framework

M&A activities related to public companies are mainly governed by the following laws:

- the Securities and Exchange Act B.E. 2535 (1992), as amended ("**SEC Act**"); and
- the Public Limited Company Act B.E. 2535 (1992), as amended ("**PLCA**").

For M&A activities related to public companies whose shares are listed on the Stock Exchange of Thailand (SET), the following rules and regulations would also be applicable and should be taken into consideration when carrying out M&A activities:

- the rules and regulations of the Securities and Exchange Commission (SEC);
- the rules and regulations of the Capital Market Supervisory Board (CMSB);
- the rules and regulations of the SET;
- the rules and regulations of the Thai Securities Depository Co., Ltd. (TSD); and
- the rules and regulations of the Thai Clearing House Co., Ltd. (TCH).

2.2 Key regulatory bodies

The key regulatory bodies for public M&A are:

- the SEC;
- the SET; and
- the Ministry of Commerce (MOC).

2.3 Other rules and principles

While the aforementioned legislation contains the main legal framework for public M&A in Thailand, there are a number of additional rules and principles that are to be taken into account when preparing or conducting public M&A activities, such as:

(a) Foreign investment restrictions

There are several laws and regulations that govern the extent of foreign participation in business activities in Thailand. The main governing law is the Foreign Business Act, B.E. 2542 (1999) ("**FBA**"). The FBA limits the rights of foreign nationals and entities to engage in certain business activities in Thailand unless a foreign business license or a foreign business certificate from the MOC is obtained before the commencement of the business operation. The FBA defines "aliens" or "foreigners" as natural persons or juristic entities (companies, registered partnerships, etc.) who do not possess Thai nationality. The definition extends to companies registered in Thailand of which 50% or more of their share capital belongs to foreign individuals or juristic entities. Investors contemplating new business ventures must carefully consider the FBA before attempting to set up operations. A foreigner may operate a business in Thailand, unless the activity of that business is restricted under the FBA or is otherwise prohibited by other specific laws. The restricted businesses under the FBA cover almost all kinds of service businesses.

(b) Restrictions on foreign participation in specific sectors

In addition to the FBA, there are several statutes that impose conditions of majority ownership and management by Thai nationals in specific business sectors, examples of which are:

- The Financial Institution Business Act B.E. 2551 (2008), as amended;
- The Life Insurance Act B.E. 2535 (1992), as amended, and the Non- Life Insurance Act B.E. 2535 (1992), as amended;
- The Thai Vessel Act B.E. 2481 (1938); and
- The Employment Provision and Employment Seekers Protection Act B.E. 2528 (1985).

(c) Investment promotion

To promote investment in Thailand, the Board of Investment ("**BOI**") grants incentives to investors in areas beneficial to Thailand's economic and social development. The BOI classifies incentive groups based on the importance of industries or activities as follows:

- **Group A1+:** Upstream industries utilizing advanced technology and innovation, and targeted technology development activities (biotechnology, nanotechnology, advanced material technology), with technology transfer in collaboration with academic/research institutes.
- **Group A1:** Knowledge-based activities focusing on R&D and design to enhance the country's competitiveness.
- **Group A2:** Infrastructure activities for the country's development, and activities using advanced technology to create value, with minimal existing investments in Thailand.
- **Group A3:** High technology activities important to the country's development, with limited existing investments in Thailand.
- **Group A4:** Activities with lower technology than A1–A3 but which add value to domestic resources and strengthen the supply chain.
- **Group B:** Supporting industries that do not use high technology but are still important to the value chain.

The incentives granted by the BOI include both tax and non-tax privileges, such as land ownership, 100% foreign ownership for certain businesses, and exemptions from certain taxes and duties. However, these privileges often come with conditions including a minimum registered capital requirement or a minimum ratio of Thai national shareholders for certain promoted investment projects.

(d) Land ownership

The main regulation governing land ownership in Thailand is the Land Code, as amended (the "**Land Code**"). The Land Code generally specifies that land in Thailand can only be owned by Thai nationals or companies in which Thai nationals own 51 percent or more of the registered shares, **and** more than half of the shareholders are Thai nationals. In other words, it prohibits foreigners (e.g. foreign individuals or a company with either more than 49 percent of its registered shares held by foreigners, or a numerical majority of its shareholders being foreigners) from owning land in Thailand.

However, as exempted under the Land Code, foreigners may be able to own land if permitted by a treaty giving foreign land ownership rights, or with the permission of the Minister of Interior for specific purposes, such as for residential, commercial, industrial, agricultural, burial, public, charitable, or religious purposes in accordance with conditions and procedures prescribed in Ministerial Regulations. In addition, foreigners may be granted an approval or a permission to own land under specific laws (e.g. obtaining permission to own the land used for promoted businesses from the BOI, or permission to own land located in an industrial estate area from the Industrial Estate Authority of Thailand.

(e) Anti-trust Law

Under the Trade Competition Act B.E. 2560 (2017) ("**Trade Competition Act**") of Thailand, there are two merger filing thresholds – the pre-closing filing threshold and the post-closing notification threshold.

- A pre-closing filing is mandatory and suspensory. It will be required where the transaction would result in the acquirer having dominance in a market in Thailand. The Thai regime sets the dominance threshold quite high. A company will be considered dominant in a market in Thailand if, in the previous year, it (a) has more than 50% market share or is one of the top three businesses in the market with a combined market share of more than 75% (provided that it has not less than 10% market share); and (b) has revenue of over Thai Baht 1 billion.

- On the other hand, the post-closing notification is mandatory but not suspensory. A post-closing notification is required within 7 days of the closing if there is a horizontal overlap between the parties and in that overlapped market, the parties combined revenue in the previous year is more than Thai Baht 1 billion.

- Transactions that may be caught under the Thai merger control regulations are share acquisitions resulting in the acquirer (and its group) holding more than 50% shares in the target (or 25% or more shares in a public company listed on the Stock Exchange of Thailand) and asset acquisitions whereby more than 50% of the normal operating assets (determined based on value of the assets described in the financial statement) of the transferor are transferred to the transferee.

- The application for the pre-merger approval requires comprehensive and detailed information on the merger, including, among others, business integration plan, market analysis, market concentration and impact on competition assessment. The Trade Competition Commission ("**TCC**") must complete its consideration of the application within 90 days (extendable for another 15 days). If the business operator disagrees with the TCC's decision, it can appeal to the Administrative Court within 60 days of the decision.

Under the Trade Competition Act, the merger of businesses includes:

- a merger between a manufacturer and another manufacturer, a distributor and another distributor, a manufacturer and a distributor, or between a service supplier and another service supplier, which results in the continuity of one business and the termination of the other business, or the creation of a new business;
- a purchase of the whole or part of the assets of another business in order to have control over its policies on business administration, administration or management, pursuant to the criteria prescribed by the TCC; and
- a purchase of the whole or part of the shares of another business whether directly or indirectly in order to have control over its policies on business administration, administration or management, pursuant to the criteria prescribed by the TCC.

The above rules will, however, not apply to the merger of businesses for the purpose of the internal restructuring of business operators which have a relationship in terms of policy direction or control, pursuant to the criteria prescribed by the TCC.

2.4 Recent reform

In September 2019, the CMSB issued amendments to the tender offer rules which can be mainly summarized as follows:

- **a limitation to the existing exemption for tender offer obligation** - a person (including the group under Thai securities law) who holds shares in a listed company up to or exceeding the tender offer trigger point (25%, 50% or 75% of voting rights in the listed company) as a result of the listed company (i) repurchasing its shares, or (ii) making a rights offer, is exempt from the tender offer obligation, but according to the 2019 amendment, if the shareholder who has been exempt from the tender offer obligation due to the share repurchase or the rights offer later acquires any amount of shares in such listed company while still holding shares above the trigger point, such shareholder will be required to make a tender offer; and
- **an additional ground for waiver of tender offer obligations** - in the case where a person is required to make a tender offer due to an act of restructuring with specified characteristics but such person does not seek to takeover the company, the tender offer obligation may be waived on restructuring basis in accordance with the 2019 amendment, subject to discretion of the SEC.

In order to reduce administrative burdens on the private sector, in May 2022, the SEC increased flexibility in making a tender offer, by cancelling a requirement to submit hard copy documents and replacing it with online submission.

2.5 Proposed reforms

In 2022, the SEC started a "regulatory guillotine", i.e., a regulatory amendment project, to support the business sector by reducing unnecessary costs. The regulatory guillotine covers the takeover rules and other areas of capital market regulations. The proposed amendments have not yet been concluded.

In November 2024, the SEC launched a public hearing on proposed amendments to the principles regarding the takeover rules. The objective is to clarify and align the regulations with current conditions and international standards including reducing the burden on the private sector. The proposed amendments include, among others, adding general exemptions of the obligation to make a tender offer, which will help streamline the process for the private sector by eliminating the need to seek waivers from the relevant authorities. Please note that the proposed amendments remain in the public hearing phase and have not yet been finalized.

3. Before a Public Takeover Bid

3.1 Pre-contractual obligations

Depending on the transaction, the M&A process typically starts with the identification of assets, determination of the most appropriate acquisition vehicle and preparation of preliminary documents. Those documents, e.g., non-disclosure and confidentiality agreements, memorandum of understanding and letters of intent, stipulate the obligations of the parties to the transaction and often key terms and conditions of the acquisition agreements. Whether or not such documents form a contract or legally bind the parties depends on their own terms.

3.2 Due diligence

Once the acquirer and the seller have signed the preliminary documents, a due diligence will normally be conducted on the target company. Due diligence will normally be conducted by financial, tax and legal advisers. The areas of focus regarding the due diligence on the target company normally depend on its business and industry, as well as on the type of the acquisition (whether it is a share or asset acquisition).

3.3 Shareholding rights and powers

Under Thai public company law, a shareholder resolution to be passed at the shareholders' meeting generally requires a majority vote, i.e., more than 50%, of the shareholders who attend the meeting and cast their votes. However, for important agenda items, such as capital increases, capital decreases or the amendment of the articles of association of the company, a shareholder resolution would require at least 75% of the total number of the votes of the shareholders who attend the meeting and are entitled to vote.

The table below provides an overview of the different rights and entitlements that are attached to different levels of shareholding within a Thai listed corporation:

Shareholding	Rights
One share	• Right to receive notice of shareholders' meetings, and to attend and vote at any shareholders' meeting. • Right to proxy another person to attend and vote at any meeting on the shareholder's behalf. • Right to examine the directors' register, the minutes of the meetings of the board of directors and the shareholders' meetings, the shareholder register and the balance sheet.

Shareholding	Rights
	- Right to propose themselves or another person for a director position. - Right to receive dividends.
Five shareholders	Right to apply for a court order to cancel the resolutions of a shareholders' meeting if the process of the meeting does not comply with the laws or corporate documents of the company.
Two-thirds of attending shareholders by head count	Right to alter the order of the agenda in a shareholders' meeting.
5% of all votes in the meeting	- Right to block voting for whitewash (a waiver of the obligation to make a tender offer by virtue of a shareholders' resolution) where the shares to be held by the acquirer account for 50% or more of all voting rights. - Right to block voting for the employee stock option plan (ESOP) in strict cases, e.g., offering of ESOP securities, representing more than 5% of the voting rights of the company, at a price below market price.
5% of all voting rights	- Right to bring an action for disgorgement of benefits wrongfully obtained by the director, the executive or a related person. - Right to submit a written proposal as an agenda for a shareholders' meeting. - Right to apply for a court order to cancel a resolution if there is contravention or failure to comply with the correct procedure for sending a notice for the meeting or voting.
5% of all shares sold	- Right to bring a lawsuit to claim compensation or request for an injunction against a director who fails to conduct their fiduciary duties and, as a result, causes damage to the company. - Right to request the registrar to appoint an inspector to proceed with the examination of the company's business operation.
10% of all votes in the meeting	- Right to block voting for an offering of the company's newly issued shares to the public at a price below the market price. - Right to block voting for ESOP.
10% of all shares sold	- Right to submit a motion to the court to order the dissolution of the company in case of certain events.

Shareholding	Rights
	• Right to request the board of directors to call an extraordinary meeting.
More than 10% of all shares sold	Right to block voting for delisting.
One-fifth (20%) of all shares sold	Right to apply for a court order to cancel the resolutions of a shareholders' meeting if the process of the meeting does not comply with the laws or corporate documents of the company.
One-third of all shares sold	Right to request for consideration and approval of additional agenda items.
Two-thirds of all votes in the meeting	Right to approve payment of cash or assets to the director(s).
More than 50% (of vote casted)	Right to approve the general business of the company/voting in general (including dividend payment, balance sheet and appointment of an auditor).
50% of all votes in the meeting (vote count) AND 75% of attending shareholders (head count)	Right to approve early removal of director(s).
75% of all votes in the meeting	• Right to approve amendments to the articles of association and memorandum of association. • Right to approve the sale or transfer of the whole or important parts of the business of the company to other persons. • Right to approve the purchase or acceptance of transfer of the business of other companies. • Right to approve (i) the entering into, amendment or termination of contracts with respect to the granting of a hire of the whole or important parts of the business of the company, (ii) the entrustment of the management of the business of the company to any other person or (iii) the merger of the business with other persons with the purpose of profit and loss sharing. • Right to approve issuance of debentures. • Right to approve capital increase and capital reduction. • Right to approve dissolution of the company. • Right to approve debt to equity conversion. • Right to approve amalgamation of the company.

Shareholding	Rights
	• Right to approve offering of the company's newly issued shares to the public at a price below 90% of market price. • Right to approve the ESOP. • Right to approve connected party transactions. • Right to approve acquisition or disposal of material assets. • Right to approve whitewash.
75% of all shares sold	Right to approve delisting (subject to more than 10% veto rights of all shares sold).

3.4 Types of public M&A transactions

There are three main forms of public M&A in Thailand. These are:

- acquisition of shares in a target company;
- acquisition of the business or assets of the target company; and
- in the context of M&A between public companies, amalgamation or consolidation of two or more public companies into a new entity (strictly speaking, the concept of 'merger' is not recognized in Thai public company law, there being instead the concept of 'amalgamation').
- Unlike public companies, the Thai Civil and Commercial Code recognizes the concept of a 'merger' for private companies. This involves the consolidation of two or more private companies into a single entity, with one of the merging companies being a surviving entity.

In addition to these three main forms, there are also some situations in which, for commercial reasons, a combination of acquisitions is necessary. Generally, the transaction begins with a share acquisition to acquire an entire entity, and is then followed by an amalgamation or asset acquisition to dispose of all or a part of the assets to the acquiring entity. In some cases, the transaction may begin with an asset acquisition transaction by the acquiring entity, and then a share acquisition transaction in the acquiring entity.

The consideration for shares or assets in the target company may be in the form of cash, shares in the acquiring companies, other securities, or a combination of these. Currently, the Revenue Department grants certain tax exemption for amalgamation, merger and an asset acquisition transaction with certain conditions. The company will benefit from this exemption if it acquires the assets of a target company.

3.5 Unfair trading practices

The unfair trading practice offenses under Thai securities law are prescribed in the SEC Act. Such offenses mainly include the following:

(a) Dissemination of false statements

This group of offenses include: (i) disseminating or certifying any false or materially misleading statement or information concerning the facts relating to the financial conditions, business operations, the price of securities, or other information relating to a listed company in a manner that is likely to affect the price of securities or the decision making on securities investment, and (ii) analyzing or forecasting the information related to a listed company by using misleading information, failing to consider the accuracy of information, or distorting information, and disclosing this analysis or forecast in a manner that is likely to affect the price of securities or decision making on securities investment.

(b) Insider trading

Insider trading is regarded by Thai laws as an unfair securities trading practice, and it is a criminal offense. A person will only commit an insider trading offense if their action meets all of the elements provided therein. The essence of insider trading consists of the following: (i) an insider (a person knowing or possessing inside information related to a securities issuing company); (ii) conducting prohibited acts in relation to listed securities and securities traded over-the-counter (namely: (a) selling or purchasing shares or entering into a derivatives contract related to securities, or (b) disclosing inside information to another person, directly or indirectly, when the offender knows or ought to know that the receiver may exploit this information to trade shares or enter into a derivatives contract related to securities); (iii) regardless of whether such act is done for their own or another person's benefit.

The SEC Act describes two types of "insider", namely (i) primary insiders and (ii) secondary insiders. The primary insiders are automatically presumed "insiders", which include, but are not limited to, directors, executives, employees, auditors and advisors of a listed company. The secondary insiders, such as a shareholder holding more than 5 percent of the shares, will be presumed to be an "insider" only if they have traded in a different manner from their normal practice.

The SEC Act also specifies exemptions from the insider trading offense, including where actions do not take an advantage of other persons.

Insider trading issues need to be considered both before and during an M&A transaction. In practice, the authorities may investigate the insider trading incident after the completion of the transaction, especially if there is share price movement or they suspect any insider trading.

(c) Market manipulation

The market manipulation offense requires an actual sale or purchase of shares with an intention to mislead the general public as to the share price or the volume of share trading, or to manipulate the target's share price or the volume of share trading to be inconsistent with that under normal market conditions.

(d) Actions disrupting continuity and reliability of trading on the exchange

The SEC Act prohibits actions which impact the continuity and reliability of trading on the exchange, including (i) front running, i.e., a brokerage company and its officers use a client's trading order in any manner that is likely to disadvantage the client for the benefit of oneself or other persons, (ii) placing or cancelling orders in a manner that causes the price or volume of the securities traded to be inconsistent with those under normal market conditions, and (iii) using or allowing another person (a nominee) to use a securities trading account or bank account to conceal a person's identity in such a way that it may allow the user to commit unfair trading practices.

3.6 Civil sanctions

In addition to criminal penalties imposed for offenses under the SEC Act, which include fines and imprisonment, civil penalties have been introduced by the amendment of the SEC Act in December 2016, as an alternative sanction for offenses that could affect the overall creditability and transparency of the capital market. The civil sanctions are applicable to market misconduct, disclosure of false information or non-disclosure of material facts that could influence investment decisions, failure of directors or executives of listed companies to perform fiduciary duties and using or allowing other persons to use a nominee account to engage in market misconduct.

The civil sanctions include monetary penalties, compensation equal to the undue benefit received, prohibition from securities trading for up to five years, a ban from being a director or executive in a listed company or a securities company for up to 10 years, and reimbursement for investigative expenses incurred by the Office of the Securities and Exchange Commission (the "**Office of the SEC**"). When an offender complies with the civil sanction imposed, the criminal penalty for the same action will be settled.

3.7 5% multiple threshold

Any person, by their own act or acting in concert with others, who either acquires or disposes of shares in an aggregate amount that reaches or crosses any multiple of 5% of the total voting rights of the company, i.e., reaching 5%, 10%, 15% and so on, must report such acquisition or disposition to the Office of the SEC within three business days from the date of the transaction. This requirement provides an early warning mechanism that enables target companies and their shareholders to be aware of every 5% change in the percentage of the voting rights and acts as an alert as to any possible acquirer who may gain material voting rights and control over the target company.

3.8 Mandatory tender offer requirement

Under Thai securities law, any person who has acquired shares, by themselves or acting in concert with others, that results in obtaining or holding up to or exceeding 25%, 50% or 75% of the voting rights in the listed company (each a 'trigger point') must make a mandatory tender offer. The rationale behind this requirement is to give the existing shareholders an opportunity to sell their shares in the listed company when there is a change in control in the company.

3.9 Chain principle

In addition to the direct share acquisition in a listed target company, a tender offer is also required when any person acquires a significant degree of control of an existing shareholder of a listed company, e.g., immediate holding entity. This can be made through direct acquisition of the immediate holding entity or indirectly through the shareholders of the immediate holding entity (intermediate entities). This is the case when the aggregate shareholding of any person in control of the chain of companies reaches or exceeds a trigger point as mentioned earlier, and the person who acquires control in the listed company through the chain principle will also have to make a mandatory tender offer.

Whether or not a person is in control of such entities is defined in two ways: (i) by holding shares representing 50% or more of the total voting rights in the immediate holding entity (in the case of direct control) or in the intermediate entity (in the case of indirect control); or (ii) by the power to control the management or operation of the relevant entity through the nomination of a substantial number of directors.

3.10 Acting in concert

Shares held by a person "acting in concert" must be aggregated with the shareholding of the acquirer when it acquires shares in the listed company.

The key elements in determining whether or not a party is "acting in concert" are:

(a) mutual intention to manage or exercise their voting rights in the same way to achieve common control in the listed company; and

(b) having a relationship or acting together in any of a manner that may lead to acting in concert, such as using the same funding source, acquiring shares at the same time, or having voting arrangements or shareholders' agreements on voting.

Both of these key elements must be met for a party to be considered as acting in concert with another party. However, in practice, the first element of mutual intention will be given more weight by the SEC in determining the matter.

3.11 Related person

In addition to the concept of "acting in concert", the shareholding of the related person(s) of the acquirer and of those parties acting in concert must be aggregated with the shareholding of the acquirer for shareholding reporting purposes and to determine if the mandatory tender offer threshold has been reached.

Related persons include spouses and minor children, ordinary partnerships in which such person or their spouse or minor child is a partner or, broadly speaking, limited partnerships and companies in which such person or their spouse or minor children or the ordinary partnership hold more than 30% of the total contribution or share capital. This includes the shareholding of the related person(s) at every shareholding level. Careful analysis of the details and implications of these provisions must be taken into consideration before acquiring or disposing of any securities in a listed company.

3.12 Disclosure by the target company

The target company must comply with the disclosure rules prior to and during the M&A transaction.

In general, when a material event occurs, a listed company must immediately disclose such relevant information to the SET.

Material events consist of actions such as entering into connected transactions, acquiring or disposing of material assets, increasing the company's capital or any other event which affects, or will affect, the interests of shareholders or any decision to invest in, or in relation to the price of, the shares of the listed company. It is worth noting that when immediate disclosure would prejudice the ability of the company to pursue its corporate aim or when the company's plans or developments are subject to rapid change, the disclosure may properly be deferred to a more appropriate time or until a firm conclusion has been made. The reason is because successive public announcements concerning the same subject but based on changing facts may confuse or mislead the public. For example, in a share acquisition transaction, when the parties sign a memorandum of understanding or a letter of intent, the parties would generally not disclose such fact and information to the SET at that time. This is because the memorandum of understanding or letter of intention normally specifies conditions to be fulfilled by the relevant party before reaching a conclusive definitive agreement. There are still uncertainties and major conditions to be fulfilled by the relevant party. However, at the signing of a definitive agreement (such as a share purchase agreement or a share subscription agreement), the transaction would become firmer and clearer. Hence, the parties would then disclose the facts and background of the transaction to the SET.

4. Effecting a Takeover

4.1 Types of tender offers

In Thailand, takeovers of public companies are conducted via tender offer. Under Thai tender offer rules, there are four types of tender offers:

(a) Mandatory tender offer: when an acquirer acquires shares and reaches the relevant trigger point and is required by law to make a tender offer;

(b) Voluntary tender offer: when an acquirer voluntarily launches a tender offer without being required to do so;

(c) Partial tender offer: when an acquirer launches a tender offer to purchase part of shares in a listed company; and

(d) Delisting tender offer: when an acquirer wishes to launch a tender offer in order to delist the company.

A bidder that intends to launch a takeover bid must prepare tender offer documents to be submitted to the Office of the SEC, as well as proof of funds.

4.2 Mandatory tender offer

(a) General rule

The trigger point for launching a mandatory tender offer is reached when a person, either by themselves or with the related person or persons acting in concert, acquires or holds up to or exceeding 25%, 50% or 75% of the total voting rights. Once such trigger point is hit, the acquirer will have to make a tender offer for the purchase of shares and equity linked securities in the listed company.

(b) No creeper rule

The creeper rules generally impose an obligation to make a tender offer when an offeror acquires a certain percentage of shares while already holding shares in a significant percentage, e.g., if the acquirer holds 25%-50% and further acquires an additional 5%, it will be required to make a tender offer (and not only the reporting obligation). However, the concept of creep rules in Thailand has been repealed.

(c) Tender offer price

As a general rule, the tender offer price may be paid in cash or in cash with additional forms of consideration. At least one form of consideration must be in monetary form. Additional forms of consideration must be appraised by a financial advisor. Additionally, the tender offer price must not be lower than the price that (i) the offeror, (ii) related person of the offeror, (iii) a person acting in concert with the offeror, or (iv) related person of (iii), has paid to acquire shares in the 90-day period prior to the launch of a tender offer.

4.3 Voluntary tender offer

The tender offeror is free to make the voluntary tender offer but will have to submit the tender offer documents to the Office of the SEC accordingly.

The tender offeror may set out the conditions to the tender offer (such as a minimum acceptance level) and if these conditions are not met, it may cancel its tender offer. For example, if, at the closing of the offer period, the number of shares tendered is less than the specified amount, e.g., 90%, 75%

or 51%, the tender offeror can cancel the voluntary tender offer. The tender offeror would have to clearly specify such condition in the offer documents when submitting them to the Office of the SEC.

4.4 Partial tender offer

A person can launch a tender offer to purchase part of the shares in a listed company. Upon completion of the partial tender offer, the percentage of shares held by the acquirer would hit the trigger point but the obligation to make a mandatory tender offer would be waived, provided that a shareholders' meeting of the listed company resolves to approve the partial tender offer and other requirements are satisfied.

However, the acquirer cannot hold shares up to 50% or more. In Thailand, there are very few precedent cases of partial tender offers.

4.5 Delisting tender offer

The major shareholder who wishes to delist the company will launch the delisting tender offer, which will require the shareholder approval of not less than 75% of the voting share capital of the listed company and there must not be shareholders representing more than 10% of the voting share capital of the listed company objecting to the delisting. In practice, the major shareholder will be the delisting tender offeror. However, legally speaking, any person can be the delisting tender offeror.

Since delisting is a significant item, all shareholders are entitled to vote on the issue and the shareholders will not be considered as having a special interest in the delisting. Therefore, the major shareholder or the shareholder who is an offeror under the delisting tender offer is allowed to cast a vote in the shareholders' meeting to approve the delisting.

(a) Delisting tender offer price

The pricing criteria in a delisting tender offer are different from the pricing criteria in a mandatory tender offer. As for a delisting tender offer, the tender offer price must not be lower than one of the following prices:

(i) the highest acquired price that (i) the offeror, (ii) related person of the offeror, (iii) a person acting in concert with the offeror, or (iv) related person of (iii), has paid to acquire the shares within 90 days before commencement of the tender offer;

(ii) the five-business day weighted average market price before the board of directors of the listed company approves the delisting;

(iii) the net total asset that is marked to market; and

(iv) the fair price appraised by an independent financial adviser.

(b) Implications of having more than 5% of the shares held by a minority after delisting

After delisting, if the minority shareholders hold shares amounting to more than 5% of the total issued share capital of the listed company (excluding the shares held by the offeror, the offeror's concert parties and related persons), the directors and executives of the listed company will still be required to comply with certain fiduciary and other legal duties under the Thai securities law, such as (i) the rules on connected transactions, (ii) the rules on acquisition and disposal of material assets of a listed company and (iii) duties to prepare and submit financial statements and reports to the Office of the SEC concerning the financial conditions and business operation of the listed company.

In practice, an acquirer who intends to delist the company would aim to acquire 95% or more of the shares in the listed company in order to avoid being subject to fiduciary and other legal duties under the Thai securities law. This is a significant issue for a listed company aiming for delisting and it should be further analyzed on a case-by-case basis for a feasible solution.

4.6 Restriction on repeating tender offers

An acquirer who has previously made a tender offer cannot make another tender offer for the purpose of taking over the business before a period of 1 year from the closing date of the offer period specified in the previous tender offer for the purchase of shares, unless the intention to delist the company is specified in the previous tender offer and the subsequent tender offer is a delisting tender offer.

4.7 Opinions of the target business in relation to a tender offer

When a tender offer is made, the target company must submit its opinion to the Office of the SEC, with copies distributed to the SET and all the shareholders. In delivering the opinion, the listed company must appoint an independent financial adviser and have the opinion of the independent financial adviser delivered along with the opinion of the listed company. Additional opinions must be prepared for any revised offers, unless special circumstances apply. Such circumstances generally relate to the latest offer being more favorable and the independent financial adviser of the company having already expressed an opinion on the issue of acceptance.

5. Timeline

The documentation for a tender offer is mostly prescribed by the SEC. A financial adviser who is familiar with tender offer transactions may need three or four weeks to prepare and finalize the tender offer documents. For a partial tender offer, the tender offeror aiming to obtain a waiver from the tender offer obligation must obtain an approval from a shareholders' meeting of the listed company in relation to the partial tender offer and submit the application for waiver to the Office of the SEC along with the fees. The waiver is subject to approval from the SEC.

Upon filing of the tender offer with the Office of the SEC, the tender offeror shall immediately deliver a copy of the tender offer and the acceptance form to the target business, and all the shareholders and securities holders. The tender offer period must be commenced within three business days from the day following the date that the Office of the SEC receives the tender offer documents. The tender offer period must be open for 25 to 45 business days. The period for a general tender offer depends on the discretion of the tender offeror. For delisting, the tender offer period must be 45 business days.

In practice, the tender offer process is usually completed within two or three months unless an extension to the tender offer period has been made. Unless there has been a competing tender offer or certain events occur to the business, the maximum tender offer period after such extension cannot exceed 45 business days.

Set out below is an overview of the main steps for a public voluntary takeover offer in Thailand.

Public voluntary takeover offer (indicative timeline)

Start process

Offeror declares intention to make voluntary tender offer with or without conditions.

Day 4

Within 3 business days from the date (i) of declaration or (ii) the prescribed conditions complete, declaration form (247-3) is filed with the Securities and Exchange Commission (SEC).

Day 11

Within 7 business days from the date of filing form 247-3, tender offer (Form 247-4) is filed with the SEC.

For a partial tender offer, if offeror aims to obtain a waiver from the tender offer obligation, they must submit an application for waiver to the SEC (including prescribed fee). Waiver is subject to approval from the SEC.

Day 12

After filing the tender offer, the offeror must immediately deliver a copy of the offer and acceptance form to the target, all shareholders and securities holders.

Offeror may prescribe conditions (e.g. a minimum acceptance level). If conditions are not met, it may cancel the tender offer.

Day 14

Tender offer period must start within 3 business days from the date the SEC receives the tender offer

Day 27

Within 15 business days from the date of the receipt of the copy of the offer, target must submit an opinion (Form 250-2) to the SEC in relation to the offer, along with the opinion of an independent financial advisor. Copies must be distributed to the SET and all shareholders.

Day 34

Within 20 business days from the start of the tender offer period, the shareholders who sell the shares in the tender can cancel their sale.

Day 35

Within 21 business days from the start of the tender offer period or 3 business days before the end of tender offer period, target must submit a preliminary report (Form 247-6-Khor) to the SEC to report result of the tender offer.

Day 39

Offer period must be open for 25 to 45 business days.

The period for a general tender offer depends on the discretion of the offeror. For delisting, the offer period must be 45 business days.

Day 42

Normally, settlement of the shares and consideration for the tender offer takes place within 2 business days after the close of tender offer.

Day 44

Within 5 business days from the end of tender offer period, the offeror files a tender offer report (Form 256-2) to the SEC to report the final result of tender offer.

25 - 45 business days

In practice, the tender offer process is usually completed within 2 or 3 months unless an extension is given.
Unless there has been a competing tender offer or certain events occur that affect the business, the maximum tender offer period after such extension cannot exceed 45 business days.

6. Takeover Tactics

6.1 Anti-takeover defense mechanisms

There are limited strategic defenses justifiable to shareholders and allowed under Thai law. Below are the summarized defensive tactics for hostile takeovers in a public M&A in Thailand.

Mechanism	Assessment and considerations
1. **Shareholders rights plan ("poison pill")**	• Right attached to each share giving non-hostile bidders a right to purchase a certain number of shares at half-price, thereby greatly diluting a hostile bidder's stake requirements under public company law concerning increase of capital. • The increase of share capital of the company requires a shareholders' vote of not less than 75% of attending shareholders who are eligible to vote. • Challenge from the hostile bidder, as a shareholder, on the favorable price for other shareholders. • The right may be regarded as a discrimination or selective action against the new shareholder. • The purpose of the plan is not for the best interest of the company, but for dilution effect instead.
2. **Golden parachutes (and tin parachutes)**	• Lucrative change of control contract for senior management (golden parachutes) and key employees (tin parachutes) which greatly increases merger-related severance costs. • Freedom of contract provided that it shall not be contrary to Thai law. • Consideration for the director of a listed company needs to be disclosed to the SET. • The consideration to be paid to the directors must be approved by a shareholders' vote of not less than two-thirds of the total number of votes of attending shareholders, unless specified in the articles of association of the company. • The amount of the severance should be reasonable. If not, it may raise the issue of conflict of interest between the company and the directors.
3. **"White knight" acquirer**	• Acquisition negotiated with friendly third party. • The acquirer must comply with the tender offer requirements. • Complying with the tender offer requirement under the SEC notification of the acquirer. The company is also required to give its opinion on the tender offer to the shareholders.

Mechanism	Assessment and considerations
4. Asset lock up ("crown jewel")	• Sale of assets in which a hostile bidder is most interested to a friendly third party. • Disposition of major assets is subject to the public company law, securities law and SET disclosure requirements. • Disclosure to SET must be made. Depending on size of the transaction, the value and size of the transaction may have to be assessed by an independent financial adviser (IFA). • It requires a shareholders' vote of not less than 75% of the total number of votes of attending shareholders who are eligible to vote.
5. Major strategic acquisition	• Size of company greatly increased or company made more unpalatable to hostile bidder. • Acquisition of major assets, e.g., another company is subject to the public company law, securities law and SET disclosure requirements. • Disclosure to SET must be made. Depending on size of the transaction, the value and size of the transaction may have to be assessed by an IFA. • It requires a shareholders' vote of not less than 75% of the total number of votes of attending shareholders who are eligible to vote. • Under Banking Law, a commercial bank is restricted from holding shares in another company or bank in excess of the amount allowed by law.
6. "Pac-man" acquisition	• Target acquires stake in or announces bid for hostile bidder. • Acquisition of major assets (e.g. another company) is subject to public company law, securities law and SET disclosure requirements. • Disclosure to SET must be made. Depending on size of the transaction, the value and size of the transaction may have to be assessed by an IFA. • It requires a shareholders' vote of not less than 75% of the total number of votes of attending shareholders who are eligible to vote. • This would result in cross-shareholding and cross-shareholding in certain levels may prohibit the hostile bidder from acquiring the target if the hostile bidder is a listed company.

Mechanism	Assessment and considerations
7. Issuance of equity	- Equity issued in offering to public thus greatly increasing the cost of acquisition. - Increase of capital and issue of securities via securities public offering. - Requirements under public company law and securities law concerning increase of capital. - The increase of share capital of the company requires a shareholders' vote of not less than 75% of the total number of votes of attending shareholders who are eligible to vote. - In making the securities public offering, the company shall apply for an SEC approval and the company is required to make a registration statement as well the prospectus in which all the information shall be disclosed. - For private placement with certain characteristics, prior approval from the SEC is required. - Takes a substantial amount of time.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Thai securities laws do not have a provision allowing majority shareholders to force the minority shareholders to sell their shares in a listed company, i.e., a minority squeeze-out. As a result, certain minority shareholders may remain even after the delisting.

8. Delisting

Thai law does not recognize the concept of privatizations or "go private". The shareholders can delist the company and become a public non-listed company. However, although the shares in a listed company are completely delisted from the SET, such company will remain as a public company and cannot be converted back to a private company. As a result, the public company still has to comply with the provisions in the PLCA and other relevant rules and regulations applicable to public companies.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Sorachon Boonsong, Jakkarin Bantathong and Theppachol Kosol in the Bangkok office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Thailand.

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Türkiye

1. Overview

In Türkiye a tender offer is the method used to conduct a public takeover bid. The main difference between public M&A and other M&A transactions is the obligation of the purchaser to launch a mandatory tender offer in certain cases and the ability of the controlling shareholder to squeeze-out the minorities against their will. Furthermore, a voluntary tender offer can be a tool to accomplish a public M&A transaction, whereas there is no such tool for private transactions.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Turkish law relating to public M&A in public companies can be found in:

- The Capital Markets Law No. 6362 (the "**Capital Markets Law**");
- The Capital Markets Board (the "**CMB**") of Türkiye's Communiqué on Tender Offers No. II-26.1 ("**Tender Offer Communiqué**"), setting out the general rules for tender offers, i.e., takeover bids, consisting of mandatory tender offers (an "**MTO**") and voluntary tender offers (a "**VTO**");
- The CMB's Communiqué on Material Transactions and Shareholders' Put Option Rights No. II-23.3 (the "**Material Transactions Communiqué**"), setting out corporate governance procedure for certain transactions including delisting of public companies;
- The CMB's Squeeze-Out and Sell-Out Rights Communiqué No. II-27.3 (the "**Squeeze-Out Communiqué**"), setting out squeeze-out requirements;
- The CMB's Communiqué on Mergers and Demergers No. II-23.2, setting out the merger and demerger rules that are applicable when at least one party is a public company; and
- The Turkish Commercial Code No. 6102 (the "**TCC**"), setting out, among other things, the general corporate governance principles applicable for all companies.

2.2 Foreign investment restrictions

The Direct Foreign Investments Law No. 4875, sets out the framework for investments made by foreign investors. Foreign investments are not restricted in Türkiye and are not subject to any prior governmental approval unless they are related to certain regulated sectors such as finance, energy, telecommunications, civil aviation and insurance. They are also subject to equal treatment with domestic investors.

2.3 Other rules and principles

While the aforementioned legislation contains the main legal framework for public M&A in Türkiye, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public M&A transaction, such as:

(a) The CMB's Public Disclosure Communiqué No. II-15.1 (the "**Disclosure Communiqué**"), setting out the framework for the public disclosures to be made in respect of public companies and capital markets instruments. The CMB has also published a set of guidelines (the "**Disclosure Guidelines**") to clarify the implementation of the Disclosure Communiqué's relatively general disclosure requirements, providing examples.

(b) The CMB's Communiqué on Market Manipulation No. VI-104.1 (the "**Market Manipulation Communiqué**"). Articles 103 to 116 of the Capital Markets Law provides for general rules and principles relating to capital markets violations and crimes while the Market Manipulation Communiqué provides detailed guidelines for insider trading and market manipulation (the so- called market abuse rules).

(c) The CMB's Share Communiqué No. VII-128.1, the CMB's Communiqué No. II-5.1 on Prospectus and Issuance Certificate and the CMB's Communiqué No. II-5.2 on Offering of Securities provide rules relating to public offering of securities and the admission of these securities to trading on a regulated market.

(d) M&A in regulated sectors, e.g., banking, civil aviation, energy, insurance, other financial institutions and telecommunications, may be subject to approval or notification requirements as applied by their respective regulators.

(e) The Competition Law No. 4054, setting out, among other things, merger control requirements and principles as applied by the Turkish Competition Board.

(f) The Communiqué on Mergers and Acquisitions Requiring the Competition Board's Approval No. 2010/4, setting out the merger control requirements in detail and thresholds, and other procedural requirements as applied by the Turkish Competition Board also apply. The Turkish Competition Board's Communiqué No. 2022/2 on Amending Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Requiring the Approval of the Turkish Competition Board ("**Amending Communiqué**") sets out significantly increased turnover thresholds triggering mandatory merger control filing. Jurisdictional turnover thresholds will be triggered if (i) combined domestic turnover of the parties exceed TRY 750 million and domestic turnover of each of at least two parties exceeds TRY 250 million; or (ii) worldwide turnover of one party exceeds TRY 3 billion and (in the case of an acquisition) target's domestic turnover exceeds TRY 250 million or (in the case of a merger only) domestic turnover of one other party exceeds TRY 250 million. Also, the TRY 250 million threshold will not apply to acquisitions of technology firms, which: (i) are active or have R&D activities in the geographical market of Türkiye; or (ii) provide services to users in Türkiye. Technology firms are defined as "undertakings that have activities in the areas of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agriculture chemicals and health technologies, or assets related thereto. The Amending Communiqué entered into force on 4 May 2022.

Also, please note that with the amendment published in the Official Gazette on 19 April 2022 amending the Communiqué No. 2008-32/34 on the Decree No. 32 on the Protection of the Value of Turkish Currency, it is no longer possible to pay the purchase price in foreign currency in respect of share sales between parties that are resident in Türkiye. The parties may still determine the purchase price in a foreign currency or index it to a foreign currency in the contract. The payment, however, must still be made in Turkish lira.

2.4 Supervision and enforcement by the CMB

Tender offers and squeeze-out procedures are subject to the supervision and control of the CMB. The CMB is the capital markets and securities regulator in Türkiye.

The CMB has a number of legal tools that it can use to supervise and enforce compliance with the tender offer and squeeze-out rules, including administrative fines and suspension of voting rights in case of a failure to initiate an MTO. In addition, criminal fines could be imposed by the courts in case of non-compliance resulting in one of the crimes set out under the Capital Markets Law, such as insider trading or market manipulation.

2.5 General principles

(a) Tender offers

The following general principles apply to tender offers in Türkiye:

(i) the acquisition of management control of a public company triggers the MTO obligation;

(ii) only those who are shareholders as of the date on which the acquisition of management control is disclosed to the public will be able to sell their shares to the acquirer;

(iii) all holders of the securities of the target of the same class must be afforded equivalent treatment;

(iv) the holders of the securities of the target must have sufficient time and information to enable them to reach a properly informed decision on the offer;

(v) the target's board must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer;

(vi) false markets must not be created in the securities of the target concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(vii) an offeror must announce an offer only after ensuring that he/she can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration where the CMB can request a guarantee from banks or other parties for the consideration;

(viii) the offer price must be fairly determined for MTOs using the mandatory methods under the Tender Offer Communiqué; and

(ix) an offeror must satisfy the public disclosure requirements for initiating and carrying out the tender offer.

(b) Squeeze-out

The following general principles apply to squeeze-out bids in Türkiye:

(i) if a shareholder or a group of shareholders of a public company acting in concert become owner of at least 98% of the voting rights of a public company, the shareholder or the group of shareholders have the right to squeeze out the minority shareholders after the put right exercise period;

(ii) the minority shareholders will have the right to put their shares to the majority shareholder within two months once the majority shareholder discloses to the public the share valuation report which it will prepare within one month at the latest once it becomes eligible to squeeze-out minority shareholders;

(iii) the majority shareholder can call the minority shares and squeeze-out the minorities, and the target is automatically delisted following the expiration on the three-month period;

(iv) the price for both the exercise of the put right and squeeze-out must be fairly determined in accordance with the same formula prescribed by the CMB; and

(v) the payment for the minority shares is required to be made in cash and Turkish lira.

2.6 Proposed reforms

There is no publicly available information on proposed reforms relating to tender offers or squeeze-outs.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights that are attached to different levels of shareholding within a public company in Türkiye:

Shareholding	Rights
One share	• The right to request information and submit questions to the directors and statutory auditors at general assembly meetings. • The right to sue for the liability of the company's directors. • The right to dividend payment. • The right to participate in liquidation proceeds. • The right to participate in the overall management of the company through voting in the board of directors' elections. • The right to request special auditors to investigate a particular matter (subject to certain conditions). • The right to pre-emptive subscription rights in case of a capital increase (public companies can restrict the pre-emptive subscription rights in certain cases). • The right to attend and vote at general assembly meetings in person or by proxy. • The right to obtain a copy of the documentation submitted to general assembly meetings. • The right to exercise a put option to sell their shares to the company if the general assembly passes a resolution concerning a material transaction, against which they voted.

Shareholding	Rights
	• The right to request the nullity of decisions of general assembly meetings which are contradicting with the law, the articles of association of the company or good faith principles.
5% or more, i.e., minority rights	• The right to request the board of directors to convene a general assembly meeting and the right to apply to court if the request regarding convocation of the general assembly is rejected. • The right to put additional items on the agenda of a general shareholders' meeting. • The right to initiate a lawsuit for cancellation of a general assembly resolution. • The right to request postponement of the negotiations on approval of the company's balance sheet for a period of one month. • The right to initiate a lawsuit for the dismissal and replacement of the company's auditor (subject to certain conditions). • The right to initiate a lawsuit for dissolution of the company (subject to certain conditions). However, the court may also resolve that the plaintiff's shares should be acquired by the remaining shareholders, instead of dissolution, or resolve to use another equitable remedy.
More than 66.66% (However, if at least 50% of the voting rights of the company (granting a right to vote) are present in a meeting, these decisions can be taken with the majority of such votes, unless a higher quorum is required by the company's articles of association)	• The right to limit the pre-emptive subscription rights of the shareholders. • The right to grant authority to the board of directors to limit pre-emptive subscription rights in companies with a registered share capital system. • The right to decrease share capital. • The right to resolve on merger or demerger decisions. • The right to change the corporate status or to liquidate company. • The right to materially change the company's scope of activity. • The right to resolve on delisting decisions. • The right to create new privileges or change the scope of existing privileges. • The right to transfer, establish a right in rem on or rent a material part of the company's assets.

Shareholding	Rights
	• The right to resolve on acquisition or lease of a material part of assets from related parties. • The right to set off debts of affiliates by proceeds of a share capital increase in case the proceeds of the share capital increase exceeds the current share capital of company.
75% or more	The right to issue any kinds of bonds or authorize the board of directors to issue bonds.
98%	The right to squeeze-out the minority shareholders (in which case the minorities also have a right to put their shares to the majority).
100%	• The right to move the company's headquarters abroad. • The right to impose additional liabilities on shareholders to recover balance sheet losses.

3.2 Restrictions and careful planning

Turkish law contains a number of rules that already apply before a tender offer (a public takeover bid) is announced. These rules impose restrictions and hurdles in relation to prior stake building by an offeror, announcements of a potential tender offer by an offeror or a target, and prior due diligence by a candidate offeror. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a candidate offeror or target intends to start up a process that is to lead towards a tender offer.

3.3 Insider trading and market abuse

Before, during and after a tender offer, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider trading and market abuse, see 6.2 below. The rules include, amongst other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent an offeror that has inside information regarding a target (other than in relation to the actual tender offer) from launching a tender offer.

3.4 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Persons becoming direct or indirect holders of 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the issued share capital of a Turkish company, including a listed company, are required to notify the company of such acquisition and, thereafter, to notify the company of their shares transactions when the total number of shares they hold falls below or exceeds such thresholds, pursuant to the TCC. Information notified to the company must be registered with the relevant trade registry and publicly announced in the Turkish Trade Registry Gazette. The notification is required to be made by the persons whose direct or indirect shareholding exceeds or falls below the foregoing thresholds within 10 days following the acquisition. The notification must be made in Turkish. There is no special form for this notification, which therefore means that it can be made by a simple petition. The relevant trade registry may, however, review and comment on the disclosure.

Under the Disclosure Communiqué, persons who become direct or indirect holders of 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of a listed company's issued share capital or voting rights are required to publicly disclose such event. The same requirement also applies to the shareholders of issuers when the total number of their shares or voting rights falls below or exceeds these thresholds. The disclosure to be made by shareholders is made by the Central Securities Depository (*Merkezi Kayıt Kuruluşu*). Disclosures of the acquisition of blocks of shares must contain the (i) name of the person, i.e., real person or legal entity, required to make the disclosure; (ii) name of the company that is the subject of the disclosure; (iii) date of the transaction; (iv) number, nominal value of the shares and transaction value; and (v) number of shares and shareholding structure pre- and post-transaction. If there are multiple holders of a share, then disclosure must be made separately for each holder.

When determining whether or not a threshold has been passed, a candidate offeror must also take into account the shares held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.8 below). These may include affiliates. The parties could also include existing shareholders of the target with whom the candidate offeror has entered into specific arrangements (such as call option agreements).

3.5 Disclosures by the target

The target must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a tender offer may constitute inside information if it is deemed to be of a "**precise nature**". If so, the target must announce this. However, the board of the target can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding an offer. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the investors being misled, that the company can keep the relevant information confidential, and that a corporate procedure is followed. Furthermore, the company is ultimately liable for the delayed disclosures.

3.6 Announcements of a public takeover bid

The acquiring party or the brokerage firm appointed to intermediate the tender offer must immediately disclose the following on the Public Disclosure Platform (the "**PDP**"). This is the platform on which public companies in Türkiye are required to publish their disclosures) in accordance with the CMB's public disclosure rules:

- the decision to initiate a VTO;
- the triggering event to initiate an MTO and whether the acquirer will apply to the CMB for an exemption along with its details, if an MTO is triggered;
- the offer price or the calculation method to determine the offer price (for MTOs disclosed simultaneously with the occurrence of the MTO requirement or decision to initiate a tender offer);
- the tender offer or MTO exemption application to the CMB;
- the CMB's decision regarding a VTO, MTO or an MTO exemption application;
- the summary or the conclusion of the valuation report, if any;

- the number, group and nominal value of the shares purchased and the number of investors responding to the tender offer at the end of each day the tender offer remains open;
- the total number, group and nominal value of the shares purchased, and the total number of shareholders responding to the tender offer, as of the end of the offer period;
- cancellation of a VTO; and
- transactions relating to price adjustment.

If the CMB determines that the tender offer application submitted to the CMB includes misrepresentations or omissions, the CMB may suspend or cancel the takeover bid.

3.7 Due diligence

The Turkish public takeover bid rules do not contain specific rules regarding the question of whether a prior due diligence can be organized or how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted, and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures and data rooms.

3.8 Acting in concert

For the purpose of the Turkish tender offer rules, persons are "**acting in concert**" if they collaborate with the offeror, the target or with any other person on the basis of an express or implied, oral or written, agreement, aimed at acquiring the management control over the target or frustrating the success of a tender offer.

Furthermore, under the Tender Offer Communiqué, individuals and/or entities are deemed to be "**acting in concert**" with the following:

- other companies in which the management control is exercised by such individual and/or legal entity shareholders of the target; and
- individuals and/or legal entities exercising management control of the legal entity shareholders of the target and other companies in which the control is exercised by such individual and/or legal entity, i.e., individuals and/or legal entities exercising management control of legal entity shareholders of the target.

The concept of persons acting in concert is very broad and, in practice, many issues can arise in determining whether or not persons act in concert. This is especially relevant in relation to MTOs. Under the Capital Markets Law and Tender Offer Communiqué, "**management control**" means directly or indirectly holding more than 50% of a public company's voting rights, individually or jointly along with the persons acting together, or holding privileged shares with a right to appoint the simple majority of the board of directors or nominate the same in the general assembly. Accordingly, if one or more persons in a group of persons acting in concert acquire the management control of a public company, the members of the group will have a joint obligation to carry out an MTO together.

4. Effecting a Takeover

4.1 Types of public takeover bid

There are two main forms of tender offers in Türkiye:

- a VTO, in which an offeror voluntarily makes an offer for all or part of the shares of the target; and
- an MTO, which an offeror is required to make if, as a result of an acquisition of securities or otherwise, it acquires the management control of the target.

An offeror that intends to launch a tender offer must include the following documents in its application to the CMB:

- share purchase agreement and other related transaction documents as well as their Turkish translations by a sworn translator;
- standard form of application containing information regarding the acquirer and the tender offer, i.e., the information form;
- information on the acquirer such as its scope of activities, shareholding structure and board of directors;
- information on the appraisal of the tender offer price (the CMB may require a valuation report in case of an MTO);
- the brokerage agreement (the offeror must sign a brokerage agreement with a brokerage firm that will carry out the takeover process with the mandatory content set out under the Tender Offer Communiqué); and
- a guarantee by a company or bank in Türkiye in order to ensure the payment of the MTO price to the minority shareholders, if required by the CMB.

4.2 Voluntary public takeover bid

The offeror is free to make the tender offer subject to merger control clearance and approval by the CMB.

The offeror is, in principle, free to determine the price and the form of consideration offered to the minority shareholders (absent any pre-existing controlling interest in the target).

The offer price may be paid in cash, listed securities or a combination of both. However, a seller must approve the payments in securities in order for the offeror to pay the seller in listed securities either partially or fully. There is no minimum price specifically set out under the Tender Offer Communiqué. Payment for the shares acquired via a tender offer must be made by the business day following the sale of the shares.

The offeror is entitled to increase the VTO price or extend the scope of the VTO in case a partial offer is made. In this case, the difference between the newly determined VTO price and the former VTO price must be paid to investors who have already accepted the VTO, within two business days.

The minority shareholders may opt out of accepting the VTO if the offeror increases the number of the shares subject to its offer.

The offeror is entitled to withdraw the tender offer up until the offer's launch and third parties are entitled to initiate a competitive offer, i.e., a competitive bid, during a VTO.

4.3 Mandatory public takeover bid

The obligation to launch an MTO is triggered as soon as a person or group of persons acting in concert acquires the management control of a public company.

The obligation to launch an MTO is not triggered if:

- the management control is acquired as a result of a voluntary tender offer made in respect of all shares of the target;
- in case the management control is acquired through an agreement without acquiring any shares, the agreement is approved by the general assembly and the shareholders voting against the agreement are granted with a right to sell their shares to the company;
- the shareholding percentage of the shareholder holding the management control falls below 50% and then exceeds 50% again before the management control is acquired by a third party;
- the voting rights enabling the management control are transferred between persons acting in concert;
- an acquirer acquires 50% or less of the voting rights from a controlling shareholder, and agrees to share the control with the (former) controlling shareholder by means of an agreement;
- change in the management control also triggers squeeze-out and sell-out rights;
- an existing shareholder acquires the management control as a result of the exercise of pre-emption right at a rights issue; or
- an unintended change in the management control occurs as a result of events beyond the control of the shareholder acquiring the management control, such as the suspension of voting rights of other shareholders, share redemptions due to capital decrease, amendments to the privileges assigned to the shares and share buybacks by the public company.

The obligation to launch an MTO may be exempted by the CMB upon request by the acquirer, filed within six business days following the triggering of an MTO, in cases of:

- acquisition of the shares or voting rights of a company as a change in its capital structure, required to strengthen the financial structure of such company under financial distress (in this case, the CMB shall investigate whether new funds are transferred to the company or whether the capital structure change is actually required);
- selling out the part of the shares required for the mandatory tender offer or filing a written undertaking to sell out the shares within a reasonable time determined by the CMB, provided that the rights regarding the company's shares are not used in any general assembly meeting after acquiring the management control or no changes are made in the company's board of directors;
- the change of control of the management in the parent company of the target, but not for the purpose of gaining control of the company's management. While identifying whether this condition exists, the CMB will assess certain conditions, including whether the target's contribution to the total assets of the parent company exceeds

10% as stated in the parent company's financial statements or whether the target is material to the operating volume of the parent company;

- a sale of shares in public companies that are owned by the government (or governmental entities, bodies and agencies) under a privatization transaction; and
- the change of control of the management of the company as a result of a merger where the surviving entity is a special purpose acquisition company (*birleşme amaçlı ortaklık*), provided that the shares owned by the shareholders who voted against the merger transaction in the general assembly meeting where the merger transaction is approved will be purchased in line with the principles and procedures set out in the prospectus prepared for the public offering.
- facilities extended by banks:
- A bank seizes the ownership of the pledged shares as part of an enforcement action upon default.
- The pledged shares are acquired by a special purpose vehicle ("**SPV**") founded by a bank as part of the enforcement action upon default.
- A bank or SPV, following their seizure, sells the pledged shares to a third party as part of the enforcement action upon default.
- The shares are transferred to satisfy the requirements of laws or regulations that set forth certain criteria to become shareholders.
- transfer of shares in order to observe a legislative provision determining the qualifications of a shareholder.
- the change of management control of the public company results from inheritance or the allocation of matrimonial property or other legal obligations.

In terms of the price offered and the form of the consideration, the rules below apply in case of an MTO, where the CMB will have ultimate discretion:

- The offer price may be paid in cash, listed securities or a combination of both. However, a seller must approve the payments in securities in order for the offeror to pay the seller in listed securities, partially or fully.
- The MTO price calculation methods differ depending on whether the target is acquired indirectly or has different classes of shares with different shareholding rights or privileges.
- The Tender Offer Communiqué provides that, in determining the minimum MTO price, price adjustment mechanisms, additional payment options and other elements that can either directly be considered a part of the purchase price or that arise as a result of fulfilling certain post-closing conditions must also be considered.
- if the CMB decides that there have been extraordinary developments affecting the Turkish economy or the public company's industry during the periods used as a basis to calculate the daily adjusted average prices of the public company's shares, the time period during which such developments occurred is disregarded and the calculation period is adjusted accordingly.
- If deemed necessary by the CMB, the CMB can ask for a valuation report to determine the MTO price. Furthermore, the CMB has the power to allow or require an

amendment of the price, including if it appears that, apart from the consideration offered, special direct or indirect advantages are granted to certain transferors of the securities.

5. Timeline

The table below contains a summarized overview of the main steps of a typical tender offer process under Turkish law.

Step	
1.	Preparatory stage: • Preparation of the offer by the offeror (study, due diligence, financing and preparation of the CMB application). • The offeror approaches the target and/or its key shareholders. • Negotiations with the target and/or its key shareholders. • In an MTO process, all necessary documentation must be ready to meet the strict deadlines outlined below.
2.	Launching of the offer: • The offeror announces its decision to initiate a tender offer on the PDP. • The pricing methodology or the price must be disclosed at this point along with the decision to initiate a tender offer. • The amount of funds available and the source of the funds must also be disclosed. • In case of an MTO, the obligation is triggered with the acquisition of management control, e.g., share transfer, execution of a voting agreement.
3.	CMB application: • The offeror applies to the CMB regarding the VTO/MTO with the required documentation. • In case of an MTO, the MTO application must be filed within six business days from the MTO triggering event, e.g., share transfer, or in cases where the obligation to launch an MTO is determined by the CMB, the MTO application must be filed within six business days from the date of notification of the determination of the CMB.
4.	CMB review and approval: • Review and approval by the CMB (no specific deadlines are set under the regulations, in practice it can take up to six weeks). • The information form on the VTO/MTO must be published on the PDP and the target's website within three business days following the approval.

Step	
5.	VTO/MTO launch: • Target's board of directors is required to prepare a report on its opinion regarding the VTO to be disclosed on the PDP one business day prior to the launch (only applicable to VTO). • VTO/MTO must be launched within six business days from receiving the CMB's approval. • In any case, an MTO must be launched within two months from the triggering event.
6.	Offer period: • The offer period must remain open for a minimum of 10 business days and a maximum of 20 business days. • The offeror is required to disclose the number and value of the shares purchased from the shareholders of the target (both on-exchange and off-exchange) along with the total number of shareholders who participated in the offer in each day during the offer period. • The offeror can increase the tender offer price or the number of the shares subject to its offer until one business day prior to the end of the VTO, in which case the offer period will be extended for two weeks (only applicable to VTO). • During the offer period, a third party is entitled to make a competitive offer. If the period of the competitive offer is longer than the VTO, the VTO's offer period can be extended to match the competitive offer's period. The shareholders that have already accepted the VTO are entitled to rescind their acceptance under certain circumstances (only applicable to VTO). • The offer period can be extended by two to three weeks subject to a change in the VTO's price or the number of the shares subject to the offer, or in the case of a competitive offer (only applicable to VTO).
7.	Disclosure: • The updated ownership structure and management status of the target is to be disclosed in the PDP.

Set out below is an overview of the main steps for a public voluntary takeover offer and a public mandatory takeover offer in Türkiye.

Public mandatory takeover offer (indicative timeline)

Start process

A Day

Offeror announces decision to initiate a tender offer or the event triggering the MTO, on the Public Disclosure Platform (PDP), along with:

- Price/pricing methodology, and
- Whether the offeror will make an application to the Capital Markets Board (CMB) for an exemption.

For an MTO, obligation is triggered with the acquisition of "management control" e.g., share transfer, execution of voting agreement. Management control is defined as ownership of (i) more than half of the share capital and/or voting rights of a public company or (ii) the ability to appoint more than half of the directors of such company

A Day + 6

Offeror applies to the CMB with required documentation.

MTO application must be filed within 6 business days from the MTO triggering event

Day X

CMB reviews and approves the offer (there is no specific deadlines under the regulations, but the MTO must be launched within 2 months of the triggering event. In practice it can take up to 6 weeks)

The information form approved by the CMB must be published on the PDP and the target's website within 3 business days following approval

Day 0

Offer must be launched within 6 business days from receiving CMB approval

In any case, MTO must be launched within 2 months from triggering event

Day 20

Offer must remain open for 10 to 20 business days.

Offeror must disclose number and value of shares purchased and total number of shareholders who answered the offer at the end of each day during offer period

Day 21

Consideration must be settled during the business day following the purchase.

Offeror must disclose (i) total number and value of shares purchased and total number of shareholders who answered the offer, and (ii) the updated ownership structure and management status of the target, on the PDP, at the end of the MTO process

Public voluntary takeover offer (indicative timeline)

Start process

A Day

Offeror announces decision to initiate a takeover offer on the Public Disclosure Platform (PDP - platform on which public companies in Türkiye are required to publish disclosures), along with:

- Price/pricing methodology, and
- Amount of funds available and source of funds

A Day + X

Offeror applies to the Capital Markets Board (CMB) with required documentation

Day X

CMB reviews and approves the offer (there are no specific deadlines under the regulations, in practice it can take up to 6 weeks)

The information form on the offer must be published on the PDP and the target's website within 3 business days following approval

Target board prepares report with opinion on the offer, to be disclosed on the PDP 1 business day before the launch of the voluntary takeover

Day 0

Offer must be launched within 6 business days from receiving CMB approval

Day 20

Offer period must remain open for 10 to 20 business days:

- Offeror must disclose number, group and value of shares purchased and total number of shareholders who participated in the offer in each day during offer period
- Offeror can increase offer price or number of shares subject to the offer until 1 business day before the end of the offer (in which case the offer period is extended for 2 weeks)
- Third parties can make competing offers. Shareholders that have already accepted may rescind their acceptance under certain circumstances

Day 21

Consideration must be settled in the following business day after the purchase

Offeror must disclose (i) total number, group and value of shares purchased and total number of shareholders who participated in the offer, and (ii) the updated ownership structure and management status of the target, on the PDP, after the end of the takeover process

6. Takeover Tactics

6.1 Inside information

A Turkish public company has the obligation to immediately disclose to the public all "**inside information**" that relates to it, including all material changes in information that has already been disclosed.

- "**Inside information**" means information of a precise nature which has not been made public, relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

- Information shall be deemed to be of a "**precise nature**" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

- "**Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments**" shall mean information a reasonable investor would be likely to use as part of the basis of his/her investment decisions.

It is up to the public company to determine if certain information qualifies as "**inside information**". This will often be a difficult exercise, and a large gray area will exist as to whether certain events will need to be disclosed or not.

6.2 Insider trading and market abuse

The basic legal framework regarding insider dealing and market abuse under Turkish law is set forth in the Capital Markets Law and the Market Manipulation Communiqué:

- Insider trading – Insider trading is a crime defined in the Capital Markets Law as benefiting from, or permitting others to benefit from, or avoiding losses through, or enabling others to avoid losses through, the use of non-public information which may affect the value of securities. Benefiting from non-public information is the essential element. For an act to constitute an insider trading violation, the information must be utilized in a manner which provides an unfair advantage over other investors. Insider trading violations are punishable by a prison term of three to five years or by fines. The minimum monetary fine imposed may not be less than two times the monetary benefit obtained through such actions.

- Manipulation – The Capital Markets Law defines two types of market manipulation. The provision of information, disseminating news or making comments in a false, falsified, misleading or groundless manner and not disclosing information which is required to be disclosed by law is defined as "**market manipulation based on information**"; whereas, the sale and purchase of securities for the purpose of artificially affecting supply and demand, creating an impression of an active market, keeping the prices at a particular level or artificially increasing or decreasing the prices is defined as "**market manipulation**". Manipulation violations are punishable by a prison term of three to five years and by fines. The minimum monetary fine imposed may not be less than the monetary benefit obtained through such actions.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a tender offer, albeit that during a tender offer additional disclosures and restrictions apply in relation to trading in listed securities.

6.3 Anti-takeover defense mechanisms

Anti-takeover defense mechanisms are not specifically regulated under Turkish law. Therefore, the legislation does not provide for break fees or lock-up arrangements. Under a VTO, a competitive offer and the board's report on the VTO may provide relief as anti-takeover defense mechanisms, yet practice of these in the Turkish market is not developed. Having said that, conventional anti-takeover mechanisms such as the poison pill (capital increase by the board under authorized capital system through limiting subscription rights) and cross-shareholding may, in theory, be applicable.

The majority of Turkish public companies have a low free float and are controlled by a single shareholder (or shareholders acting in concert). In practice, this leaves no room for hostile takeovers in the Turkish market.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

If a shareholder or a group of shareholders of a public company acting in concert become owner of at least 98% of the voting rights of a public company, they may squeeze-out the minorities and the minorities will also enjoy a put right even if the majority shareholder does not exercise its squeeze-out right. Shareholders becoming entitled to squeeze-out the minority shareholders are required to publicly disclose such entitlement on the PDP.

Whenever the squeeze-out right becomes exercisable, the minority shareholders will first enjoy the right to request the majority shareholder(s) to buy out their shares in the public company. In other words, once the majority shareholder becomes eligible to squeeze out minority shareholders, minority shareholders will have the right to put their shares to the majority shareholder within three months as of the disclosure of becoming a majority shareholder. If any minority-held shares are not sold during the three-month buy-out period, the majority shareholder can then call the minority shares and squeeze-out the minorities, with the target being automatically delisted. The important difference between the majority shareholder's squeeze-out right and the minorities' put right is the applicable price. The squeeze-out and sell-out price is calculated according to the Borsa İstanbul's market in which the relevant company's shares are traded. Accordingly, the price is determined as the highest one of the following:

- For companies listed on the Yıldız Market: the average of the daily corrected average price for the last month prior to the disclosure of the triggering of the squeeze-out and sell-out rights to the public, and the value determined in the valuation report to be commissioned by the company.
- For companies listed on other markets: the average of the daily corrected average price for the last six months prior to the disclosure of the triggering of the squeeze-out and sell-out rights to the public and the value determined in the valuation report to be commissioned by the company (for non-listed public companies, the value determined in the valuation report).
- The mandatory tender offer price will be determined in accordance with the mandatory tender offer regulations if the acquisition of the controlling shareholder status simultaneously leads to a change in management control (also applicable for non-listed public companies).

It is important to note that the majority shareholder is required to exercise the squeeze-out right within two business days after the elapse of the three-month period in which the minority shareholders can exercise their put option rights.

The put and squeeze-out processes are done via a brokerage firm. For the squeeze-out process, the board of directors needs to apply to (i) the CMB to cancel the shares of the minority shareholders and issue new shares after adopting a board resolution along with the required documents, and (ii) Borsa Istanbul, i.e., the only stock exchange in Türkiye, for the delisting of the public company.

Payment for the minority shares is required to be made in cash and Turkish lira. After the majority shareholder deposits the price for the minority shares to the public company's bank account and pays the CMB fees, the CMB issues an issuance certificate for the newly issued shares for the majority shareholder, which must be registered with the trade registry within three business days. The minority shareholders' shares are cancelled as of the date of the registration with the trade registry and new shares are issued to the majority shareholder. Once this process is completed, the public company will be automatically delisted and will no longer be subject to Turkish capital markets laws and regulations.

8. Delisting

If a shareholder or shareholders of a public company acting in concert holds, directly or indirectly, 98% or more voting rights of a public company and squeezes out the minorities, the public company will apply to Borsa Istanbul for delisting.

The delisting procedure requires specific disclosures to be made in relation to board decisions, applications with the CMB and Borsa Istanbul.

9. Contacts within Baker McKenzie

Eren Kurşun and Muhsin Keskin in the Istanbul office are the most appropriate contacts within Esin Attorney Partnership* for inquiries about public M&A in Türkiye.

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*Esin Attorney Partnership is a member firm of Baker & McKenzie International, a Swiss Verein.

Ukraine

1. Overview

Ukraine began to encounter adverse economic and geopolitical conditions in 2014 but deal activity significantly picked up in 2016 due to increased economic and political stabilization. Since 2017, the market has shown signs of gradual recovery after going through the worst of the downturn. After the Covid-19 pandemic struck, M&A activity overall experienced a slowdown, which affected practically all industries. Following a limited recovery during 2021, the Russian invasion of Ukraine in 2022 significantly disrupted the M&A market, causing a near-complete halt in deal activity during the initial months. However, the market has gradually regained momentum as temporary martial law restrictions have been lifted or relaxed.

Before the invasion, a significant portion of recent M&A activity was concentrated in Ukraine's agricultural sector. The world's largest agricultural processing companies had also been actively investing into Ukraine's port infrastructure by building grain terminals for the export of their products. Ukraine is also world-renowned for its IT outsourcing market and had gained some momentum in the IT products industry. Thanks to the ever increasing expertise of human capital and the intangible nature of the innovation business, Ukraine's innovation and technology industry remains on investors' radars. In addition to agriculture and IT, renewable energy, infrastructure, healthcare, telecommunication, transportation and logistics have traditionally been among the most attractive sectors for investors. Since the invasion, there has been a significant shift in investor focus toward defense technologies, driven by increased demand for innovation in this area and concentration of high-profile specialists.

The public M&A market is very limited in Ukraine due to how businesses have been historically set up and how corporate law has evolved. The majority of Ukrainian companies exist in the form of limited liability companies to which the public takeover rules do not apply. The Ukrainian public M&A market has been formed, to a significant extent, through the acquisition of former state owned enterprises, either directly from the state in the privatization process or in the secondary market. Such former state owned enterprises usually exist in the form of joint stock companies ("**JSC**"). Currently, there are approximately 13,500 public and private JSCs registered in Ukraine.

Generally, JSCs may be 'public' or 'private'. A public JSC's shares were publicly offered and/or admitted to trading on a stock exchange, whereas the shares of a private JSC may not be publicly traded. Taking into account the quasi-public nature of the majority of JSCs, the recent corporate reform has drawn a clear line between the regulation of the public JSCs and the private JSCs by establishing stricter requirements for public JSCs and relaxing requirements for private JSCs. These changes have resulted in clean-up of the market from the "quasi-public joint stock companies". Currently, there are approximately only 1,600 public JSCs registered in Ukraine.

The takeover rules introduced in June 2017, have significantly reshaped the regulations on the acquisition of shares of both public and private JSCs. Thus, even though there are only a few public companies in Ukraine, the vast majority of the takeover rules described below apply to the direct or indirect acquisition of any type of JSC in Ukraine and should be strictly followed by the parties.

2. General Legal Framework

2.1 Main legal framework

The principles and main rules of Ukrainian law relating to public takeovers and mergers are set out in the following legislation:

- the Civil Code of Ukraine dated 16 January 2003, No. 435-IV;

- Law of Ukraine "On Joint Stock Companies" dated 27 July 2022, No. 2465-IX ("**JSC Law**");
- Law of Ukraine "On Capital Markets and Organized Commodity Markets" dated 23 February 2006, No. 3480-IV ("**Capital Markets Law**");
- Law of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets" dated 30 October 1996, No. 448/96-BP; and
- A corpus of bylaws and legally binding court practice that specify the rules contained in the legislation listed above.

The Ukrainian capital markets regulations underwent several significant reforms in recent years. The following are the three most notable reforms:

- Law of Ukraine "On Amendments to Certain Legislation of Ukraine Regarding Improvement of Corporate Governance of Joint Stock Companies" dated 23 March 2017, No. 1983-VIII ("**Corporate Governance Law**"), introduced new takeover rules based on EU Directive 2004/25/EC of 21 April 2004 on takeover bids. The Corporate Governance Law changed, among others, the rules for the acquisition of controlling stakes, introduced the concepts of "mandatory tender bid", "squeeze-out" and "sell-out", and increased the disclosure requirements.
- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Simplifying Business Activity and Attraction of Investments by Securities Issuers" dated 16 November 2017, No. 2210-VIII, overhauled the Ukrainian stock market mainly through the removal of 'quasi-public JSCs' and by aligning the requirements for public JSCs to the EU regulations. According to this law, all JSCs in Ukraine are considered to be private JSCs as of 6 January 2018, except for the public JSCs whose shares are listed on a stock exchange or who make a public announcement that they shall remain public. The law also established stricter requirements for public JSCs, including new rules for disclosure of information (disclosure thresholds, content of information and means of disclosure), additional regulation on supervisory boards in public JSCs and new prospectus requirements (including the requirements for language and content of prospectuses).
- On 19 June 2020, Ukrainian Parliament approved the new version of the Capital Markets Law aimed at implementation of a number of EU Directives and Regulations bringing into compliance the Ukrainian capital markets regulations with EU requirements.
- On 1 January 2023, a restated JSC Law came into force, significantly aligning Ukraine's legislation on JSCs with EU standards. This reform primarily focuses on harmonizing and improving corporate governance frameworks. The new JSC Law introduces substantial changes aimed at modernizing corporate governance within JSCs, including bringing the rules on shareholder representation in line with EU legislation, introducing the possibility to opt for a one-tier corporate governance structure.
- On 8 March 2024, Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Corporate Governance" dated 22 February 2024, No. 3587-IX came into effect. This legislation aims to implement best practices in corporate governance, enhance the investment appeal of state-owned enterprises, and bring Ukrainian laws into closer alignment with EU standards.

2.2 Other rules and principles

While the aforementioned legislation contains the main legal framework for acquisitions of JSCs, there are a number of additional rules and principles that must be taken into account when preparing or conducting a public takeover or merger, such as:

- Law of Ukraine "Depository System of Ukraine" dated 6 July 2012, No. 5178-VI that sets out the rules relating to registration and confirmation of rights to securities and the procedure for settlements of securities transactions;
- Law of Ukraine "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations" dated 15 May 2003, No. 755-IV, Law of Ukraine "On Prevention and Counteractions of Legalization of Proceeds of Crime, Financing of Terrorism and Circulation of Mass Destruction Weapon" dated 6 December 2019, No. 361-IX ("**UBO Law**") that set out the rules relating to the disclosure of ultimate beneficial owners. For further information, see 4.1 below;
- The rules and regulations regarding merger control. These rules and regulations are not further discussed herein; and
- A corpus of bylaws and legally binding court practice that specify the rules contained in the legislation listed above.

2.3 Supervision and enforcement by the Securities Commission

The securities market in Ukraine is subject to the supervision and control of the National Securities and Stock Market Commission ("**Securities Commission**"). The Securities Commission is the principal securities regulator in Ukraine.

The Securities Commission has a number of legal tools that it can use to regulate, supervise and enforce compliance with the securities legislation, including the requirements for acquisition of controlling stakes and the squeeze-out and sell-out procedures. In particular, the Securities Commission may apply financial sanctions in the case of non-compliance with the takeover rules or strip market participants of the licenses that are required to carry out certain activities in the Ukrainian securities market. Non-compliant actors are also subject to criminal liability in the case of gross non-compliance with the securities legislation.

2.4 Foreign investments restrictions

Following the launch of the Russian Federation's invasion of Ukraine on 24 February 2022, the government has introduced a martial law regime. Currently, the martial law regime is effective until 7 February 2025, but since the beginning of the invasion it has been prolonged every 3 months and will most likely be prolonged again. The martial law provides for a range of limitations and special measures aimed at the stabilization and protection of the Ukrainian financial system and economy. Investments associated with entities or individuals that have ties with the Russian Federation or Belarus are effectively banned. The Ukrainian government has imposed restrictions ranging from a ban on payments and notarial and registration actions for the benefit of such persons, to the forced seizure of assets that belong to the same.

Other foreign investments are not restricted in Ukraine. Unless in the context of specific industries and sectors (such as rockets, financial services, broadcasting, banknotes, agriculture), takeovers are not subject to prior governmental or regulatory approvals other than customary anti-trust approvals.

2.5 Proposed reforms

The Law of Ukraine "On Amendments to the Law of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets" and Certain Other Legislative Acts of Ukraine on Improving State

Regulation and Supervision of Capital Markets and Organized Commodity Markets" dated 22 February 2024, No. 3585-IX, introduces significant changes aimed at fostering a fair, efficient, and transparent stock market in Ukraine. Effective 1 January 2026, these amendments include enhanced disclosure requirements for inside information to align with international standards, new regulations on market abuse practices, and additional measures to strengthen trust and operational stability in Ukraine's capital markets.

As part of its European Union integration, Ukraine is implementing a major reform to corporatize state and municipal enterprises by converting them into joint-stock companies (JSCs), limited liability companies (LLCs), or similar legal forms while also harmonizing its commercial law framework through the elimination of the Commercial Code of Ukraine. The recently adopted Draft Law "On Specific Regulation of the Entrepreneurial Activity of Certain Types of Legal Entities and Their Associations in the Transitional Period" dated 9 September 2021, No. 6013 establishes a five-year transition period for all state and municipal enterprises to reorganize into JSCs, LLCs, or equivalent structures, or cease operations. This reform is designed to enhance corporate governance transparency, define clear responsibilities between owners and management, and boost investor confidence. While the law has been approved by the Ukrainian Parliament, it is still subject to final legislative procedures, including the President's signature and official publication, before entering into force.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of the different rights and powers that attach to different levels of shareholding within a JSC:

Shareholding	Rights
One share	• The right to be notified of the convening of the general shareholders' meetings and the right to attend and vote at general shareholders' meetings. • The right to receive dividends. • The pre-emption right to subscribe for additionally issued shares. • The right to receive a part of the property of the JSC in case of its liquidation. • The right to receive information on the business activity of the JSC (except documents confirming the JSC's property rights and accounting documents). • The right to have access to the documentation required for adoption of the decision at the general shareholders' meetings. • The right to receive information about the list of the JSC's affiliated entities and information concerning their shareholding in the JSC. • The right to provide suggestions regarding questions included into the agenda of a general shareholders' meeting,

Shareholding	Rights
	including in relation to candidates to be appointed to the governing bodies of the JSC. • The right to require mandatory buy-out of its shares at market value in case of voting against the following matters at the general shareholders' meeting: • merger, split-off, reorganization, spin-off, change of JSC's type from private to public and vice versa; • approval of the JSC entering into significant agreements; • approval of the interested party transaction; • change of the charter capital; • refusal to use the pre-emption right to purchase shares of additional allotment in the process of their placement; and • issue of convertible bonds. • The right to sell its shares to a shareholder who acquired a controlling stake (more than 50% of shares) in a public or private JSC or a significant controlling stake (75% or more of shares) in a public JSC. • The right to sell-out.
5% or more	• Constitutes a "significant stake". • The right to propose additional items on the agenda of a general shareholders' meeting (the inclusion of which into the agenda of the general shareholders' meeting is mandatory). • The right to request the convening of an extraordinary general shareholders' meeting. • The right to appoint representatives to supervise registration of shareholders, holding of a general shareholders' meeting, voting and counting processes. • The right to receive full information on the business activity of the company. • The right to file a claim against JSC's officers for compensation for losses caused to the JSC by a corporate officer(s). • The right to initiate an audit of the JSC's financial statements to be conducted by an independent auditor, but at their own expense and not more than twice per calendar year. • The right to initiate a special audit of financial and commercial activities of the JSC to be conducted by an

Shareholding	Rights
	independent auditor or internal audit commission (auditor) at their own expense. - The right to block amendments to the private JSC's charter aimed at eliminating provisions on shareholders' rights and obligations to file sell- and squeeze-out bids.
25% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to block, among others: - changes to the charter, except for certain exceptions provided for by JSC Law, such as eliminating provisions of a private JSC's charter establishing shareholders' rights and obligations to file sell- and squeeze-out bids; - issue, sale and cancellation of treasury shares (shares bought back by the JSC); - change of type of the JSC (from public to private and vice versa); - change of corporate management structure; - placement of shares; - placement of securities that can be converted into shares and of the securities for the amount exceeding 25% of the JSC's total assets; - capital increases and capital decreases; and - spin-off and termination, including liquidation, merger, split-off, and reorganization.
50% and more	Constitutes a "controlling stake" in any type of JSC (both public and private).
More than 50%	Constitutes the quorum at a general shareholders' meeting.
More than 50% (at a general shareholders' meeting)	The ability at a general shareholders' meeting to decide on the following, among others: - determination of the main directions of the JSC's business; - approval of the share split or consolidation; - approval of the annual report of the JSC; - distribution of the JSC's profits or allocation of losses; - approval of the regulations of the general shareholders' meeting, the supervisory board, the board of directors, as well as amendments to such regulations;

Shareholding	Rights
	• approval of the amount of the annual dividends; • appointment of supervisory board members and members of the board of directors, approval of the terms and conditions of the civil-law agreements or employment agreements (contracts) to be entered into with each member of the supervisory board and board of directors, determination of their remuneration, and appointment of a person authorized to execute the civil-law agreements with the members of the supervisory board and board of directors; • approval of the regulation and reports on the remuneration of the members of the supervisory board and board of directors (sole executive body, if applicable) according to the requirements set out by the Securities Commission; • approval of removal (including before lapse of their term of office) of the members of the supervisory board and board of directors; • appointment of an independent auditor or internal audit commission (auditor), and approval of their removal (including before lapse of their term of office); • approval of reports of an independent auditor or internal audit commission (auditor); • consideration of conclusions of an independent auditor or internal audit commission (auditor) and approval of the resolution following such consideration; • approval of the reports of the supervisory board or board of directors, and approval of the resolution following consideration of the respective reports; • approval of the JSC's code of corporate governance; • appointment of the chairman and members of the counting commission of the general shareholders' meeting; • granting consent to the significant and interested party transactions (if required); • filing a claim in case of non-compliance with requirements regarding approval of significant transactions; and • any other decisions for which supermajority is not required and which do not fall under exclusive competence of the supervisory board.
75% and more (only for a public JSC)	Constitutes a "significant controlling stake".

Shareholding	Rights
More than 75% (at a general shareholders' meeting)	To decide on the following, among others: • changes to the charter, except for certain exceptions provided for by JSC Law, such as eliminating provisions of a private JSC's charter establishing shareholders' rights and obligations to file sell- and squeeze-out bids; • issue, sale and cancellation of treasury shares (shares bought back by the JSC); • change of type of the JSC (from public to private and vice versa); • change of corporate management structure; • placement of shares; • placement of securities that can be converted into shares and of the securities for the amount exceeding 25% of the JSC's total assets; • capital increases and capital decreases; and • spin-off, and termination, including liquidation, merger, split-off, and reorganization.
95% or more	• Constitutes a "dominant controlling stake" in any JSC (both public and private). • The possibility to force all other shareholders to sell their shares through launching a squeeze-out bid (a "**squeeze-out**").
95% or more (at a general shareholders' meeting of private JSC)	To decide, among others, on changes to the charter of a private JSC aimed at eliminating provisions establishing shareholders' rights and obligations to file sell- and squeeze out bids.

3.2 Restrictions and careful planning

Ukrainian law contains a number of rules that already apply before an acquisition of a JSC's shares is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder and announcements of a potential acquisition by a bidder or a target company. The main restrictions and hurdles are summarized below. Some careful planning is therefore necessary if a candidate bidder intends to start a process that is to lead toward an acquisition of shares in a JSC. When planning and structuring the deals, it is also crucial to take due account of the Ukrainian currency control restrictions, which may apply to cross-border share transfers and settlements.

3.3 Insider dealing and market abuse

Before, during and after an acquisition of shares, the general rules regarding insider dealing and market abuse remain applicable (see 6.3). The rules include, among other things, that manipulation of the target's stock price, e.g., by creating misleading rumors, is prohibited.

3.4 Disclosure of shareholdings and disclosure by the target company

The rules regarding the disclosure of shareholdings and transparency apply before, during and after an acquisition of a JSC's shares.

Ukrainian legislation currently has the following mandatory requirements regarding the disclosure of shareholdings or disclosures by the target company:

- announcement of a bid to purchase 5% or more shares in the target company;
- announcement of the conclusion of a share purchase agreement to acquire 50% of shares in a public or private JSC and 75% of the shares in a public JSC; and
- announcement of an acquisition of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% and 95% of the shares in a public JSC and 5%, 50%, 95% in a private JSC.

If a bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to it have passed an applicable disclosure threshold. As illustrated above, the relevant disclosure thresholds in Ukraine are 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% and 95% for a public JSC and 5%, 50%, 95% for a private JSC. Similar rules apply to the holding of financial instruments relating to shares in target companies.

When determining whether a threshold has been passed, a bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.7 below), which includes affiliates. The parties could also include existing shareholders of the target company with whom the bidder has entered into specific arrangements, such as agreements on exercising their voting rights.

3.5 Announcement of a takeover bid

Although Ukrainian legislation implies that inside information, of which a takeover bid is a part, must be made public in accordance with legislation, currently there is no specific regulation regarding the announcement of a takeover bid. However, pre-acquisition announcements may be required for a JSC share deal.

If, after the acquisition of shares of a JSC, the shareholding of a person (or persons acting in concert), coupled with the existing shareholdings of its affiliated persons in such JSC, would constitute at least 5% of the voting shares of the JSC, then the proposed purchaser must make a notification of the acquisition at least 30 days prior to the contemplated acquisition, to:

(a) the JSC;

(b) the Securities Commission;

(c) the stock exchanges on which the JSC shares are listed; and

(d) to the information database of the Securities Commission or through legal entities providing information disclosure services on behalf of the stock market participants.

If the proposed purchaser already holds 5% of the voting shares of the JSC, such announcement is not required. The JSC whose shares are being so acquired, is prohibited from taking action to prevent such acquisition.

As currently drafted, this requirement applies only to the direct acquisition of shares of any type of a JSC, but it does not apply in the case of an indirect acquisition of the shares.

3.6 Due diligence

Ukrainian law does not regulate the due diligence process in the context of share acquisitions. Nonetheless, the concept of due diligence or pre-acquisition review by a bidder is very well known, and widely used, in Ukraine. The parties ordinarily implement the appropriate mechanisms to organize a due diligence or pre-acquisition review. These can include procuring the management's cooperation and disclosures, and the use of non-disclosure arrangements and data rooms.

3.7 Acting in concert

For the purposes of the Ukrainian takeover bid rules, persons "act in concert" if such individuals and/or legal entities act upon an agreement concluded between them and agree their actions in order to reach the common goal.

The definition of "persons acting in concert" is very broad, and the concept was only introduced into Ukrainian law in June 2017, when the Corporate Governance Law became effective (see 2.1). In practice, individuals and/or legal entities conclude the joint venture agreements, such as a joint venture agreement for the implementation of the squeeze-out procedure, which enables them to obtain the status of "persons acting in concert".

4. Effecting a Takeover

4.1 Mandatory disclosures

(a) Disclosures by the target company

As a general rule, all JSCs are under an obligation to make certain disclosure in connection with the acquisition of their shares, including regular disclosures on a quarterly (only for public JSCs) and annual basis, as well as extraordinary disclosures when certain events occur. The list of disclosable information is more extensive for public JSCs. The disclosures must be made by means of submissions to the Securities Commission, and placement of the information on the JSC's website. Public and private JSCs are required to publish certain information pertaining to their corporate matters on their official webpages. All disclosures shall be made by means of publication on JSCs' websites, submission to the Securities Commission (for all JSCs) and submission to the Securities Commission database or through legal entities which provide disclosure services on behalf of the stock market participants (only for public JSCs).

- Extraordinary disclosures

  The list of information to be disclosed by the target company as extraordinary disclosures includes the changes of shareholders of a JSC and acquisition of shares, which include:

  - a change of the shareholders owning 5, 10, 15, 20, 25, 30, 50, 75 or 95% of the voting shares of a public JSC or 5%, 50%, 95% of the voting shares of a private JSC;
  - a direct or indirect acquisition of 50% or more voting shares of any type of a JSC;
  - a direct or indirect acquisition of 75% or more voting shares of a public JSC; and
  - a direct or indirect acquisition of 95% or more voting shares of any type of a JSC.

- Regular disclosures

  The annual disclosures must provide, among other things, information on the owner of any shares constituting at least 5% of a JSC.

- UBO disclosure

  The UBO Law requires disclosure of the ultimate beneficial owners ("**UBOs**"). All legal entities registered in Ukraine are required to identify their UBOs, keep their records about the UBOs up-to-date and disclose certain UBO-related information to the Ukrainian company registrar.

  Under the UBO Law, Ukrainian companies are obliged to submit to the companies registrar:

  - its structure of ownership demonstrating the links between the group companies up to the UBOs (if any) in the approved form (the form was approved by the Order of the Ministry of Finance of Ukraine "On Approval of the Regulations on the Form and Substance of Ownership Structure" dated 19 March 2021, No. 163, which entered into force on 11 July 2021);
  - extract or other document from the commercial, banking, court register, confirming the registration of the non-resident founder in the jurisdiction of incorporation;
  - legalized (apostilled) documents in confirmation of each ownership/control chain between non-resident legal entities and individuals; and
  - notarized passport copies of the UBOs (if any).

  A UBO is an individual who exercises a decisive influence on activity of a legal entity, either directly or indirectly. The "decisive influence" is established according to the following criteria:

  - For direct control. An individual should directly hold at least 25% of charter capital or voting rights in a legal entity.
  - For indirect control. An individual should:
    - indirectly hold at least 25% of charter capital or voting rights in a legal entity through affiliated legal entities, individuals, trusts or other similar entities, or
    - exercise de facto control over a legal entity irrespective of formal ownership (control over all assets or a part of assets of a legal entity, income from activities of a legal entity, a decisive impact on formation of management bodies, voting results, right to enter into transactions which significantly impact commercial activities of a legal entity, right to make mandatory decisions with respect to a legal entity which significantly impact activities of a legal entity).

(b) Disclosure by a shareholder

- Threshold disclosures for JSCs

If, after the acquisition or alienation of shares of a JSC, the shareholding of a person (or persons acting in concert) will become higher, lower or equal to the threshold of 5, 10, 15, 20, 25, 30, 50, 75 or 95% of the public JSC's voting shares or 5%, 50%, 95% of the private JSC's voting shares, such person or persons acting in concert shall notify the JSC about the new size of its future shareholding within three business days after it became aware, or should have become aware of such acquisition or alienation of shares.

- Acquiring 5% or more.

  See 3.5 above.

- Acquiring controlling stakes (50% or more or 75% or more shares of public JSC)

  In light of the obligation of the shareholders acquiring certain stakes in the JSCs to offer to purchase shares of minority shareholders, such shareholders should make certain disclosures. Shareholders acquiring 50% or more of the ordinary shares in any type of a JSC and shareholders acquiring 75% or more of the ordinary shares in a public JSC are required to notify the target company and the Securities Commission both (i) on conclusion of the respective agreement after signing and (ii) on the acquisition of the respective stake once the share ownership is transferred (including the highest share price paid by the stakeholder over a period of 12 months).

- Acquiring a dominant controlling stake (95% or more)

  For the purposes of a squeeze-out and sell-out, a shareholder that acquired 95% or more of the ordinary shares in any type of a JSC should submit a notification to the JSC and the Securities Commission that it has acquired such a stake. The notification should include the number of shares owned before and after such acquisition, the ownership structure of the stakeholder and its affiliates (as applicable), market share price on the last business day before acquiring a dominant controlling stake, the highest share price paid by the stakeholder (directly or indirectly) over a period of 12 months and the date it acquired a dominant controlling stake.

4.2 Types of takeover bid

There are three main forms of takeover bids:

- a mandatory tender bid, which a bidder is required to make if, as a result of an acquisition of shares, it crosses (alone or in concert with others) a threshold of 50% of the ordinary shares of any type of a JSC (a "**controlling stake**"), a threshold of 75% of the ordinary shares of a public JSC (a "**significant controlling stake**");
- a sell-out bid, which a bidder is required to make if, as a result of an acquisition of shares, it crosses (alone or in concert with others) a threshold of 95% of the ordinary shares of any type of a JSC (a "**dominant controlling stake**"). It can be exercised only after a mandatory tender bid; and
- a squeeze-out bid, in which a shareholder acquiring 95% of the ordinary shares can squeeze-out the remaining holders of ordinary shares. It can be exercised only after a mandatory tender bid.

(a) Mandatory tender bid

- A mandatory tender bid is triggered as soon as a person or group of persons acting in concert, as a result of an acquisition of ordinary shares, holds, directly or indirectly, 50% or more of ordinary shares of any type of a JSC or 75% or more of the ordinary shares of a public JSC.
- The mandatory tender bid is irrevocable.
- The main exceptions to the mandatory tender bid obligation include the situations where:
  - a person (or persons acting in concert) already holds a controlling stake in any type of a JSC and/or a significant controlling stake in a public JSC, including the shares held by its affiliates;
  - a controlling stake in any type of a JSC and/or a significant controlling stake in a public JSC was inherited or obtained as a result of liquidation of a legal entity;
  - a controlling stake in any type of a JSC and/or a significant controlling stake in a public JSC was acquired in the process of a JSC establishment;
  - the acquisition of a controlling stake in any type of JSC and/or a significant controlling stake in a public JSC results in the acquisition by a person (or persons acting in concert) of all shares of a JSC (including shares held by such person's affiliates).
  - a significant controlling stake in a public JSC was acquired by way of purchasing shares from minority shareholders under a mandatory tender bid made as a result of acquiring 50% or more (but less than 75%) of the ordinary shares of a JSC.
- The mandatory offer price must be the highest of the following:
  - market value, determined by an independent appraiser as of the day (or business day for private JSCs) preceding the day of disclosure of information on entering into the agreement for acquisition of a controlling or a significant controlling stake;
  - the highest price paid for the same shares by the bidder over a period of 12 months preceding the day of the direct or indirect acquisition of a controlling or a significant controlling stake; or
  - the highest price paid by the bidder for the shares of another legal entity that directly or indirectly owns shares of such JSC over a period of 12 months preceding the day of acquisition of a controlling or the significant controlling stake by the bidder, provided that the value of the shares directly or indirectly owned by such legal entity, according to its latest annual financial statements, consist of at least 90% of the total assets of such legal entity.
- The mandatory tender bid price for the shares should be approved by the supervisory board or board of directors of a JSC. It can be paid in cash, securities or a combination of both.
- If during the mandatory tender bid period (starting on the date of publication of a mandatory tender bid), the bidder (or persons acting in concert with the

bidder) acquires the shares at a higher price, then the offered price must be raised to that higher price. If any shares were purchased from minority shareholders before the price was raised then the bidder should compensate such minority shareholders for the difference in price.

(b) Sell-out obligation

- **Sell-out right if the bidder is not itself launching a squeeze-out**: minority shareholders have a sell-out right within 180 calendar days following the date of disclosure of information of the acquisition of 95% or more of the ordinary shares, unless a squeeze-out procedure was launched.
- The sell-out price should be determined as the highest of the following:
  - the market value determined by an independent appraiser as of the business day preceding the day of acquisition of 95% or more ordinary shares;
  - the highest price for which a person or its affiliates, directly or indirectly, acquired 95% or more of the ordinary shares of a JSC over a period of 12 months preceding the day of such stake acquisition, including the date of acquisition; or
  - the highest price for which a person or its affiliates acquired the shares of another legal entity that directly or indirectly owns shares of such JSC, over a period of 12 months preceding the day of acquisition of 95% or more of the ordinary shares, provided that the value of the shares directly or indirectly owned by such legal entity, according to its latest annual financial statements, consist of at least 90% of the total assets of such legal entity.

(c) Squeeze-out right

- **Squeeze-out**: a bidder (or persons acting in concert) have the right to squeeze-out the minority shareholders within 90 days following the date of disclosure of information on acquisition of 95% or more ordinary shares (see 4.1(b)), provided that the bidder has complied with the mandatory bid procedure before launching the squeeze out bid.
- The squeeze-out price should be determined in the same manner as the sell-out price.
- Minority shareholders (each acting alone or in concert with others) have the right to submit a counterbid within 20 business days of receiving the initial squeeze-out bid (see 6.5).

5. Timeline

The table below contains a summarized overview of the takeover rules for building up a controlling stake, a significant controlling stake and a dominant stake, and squeeze-out and sell-out procedures.

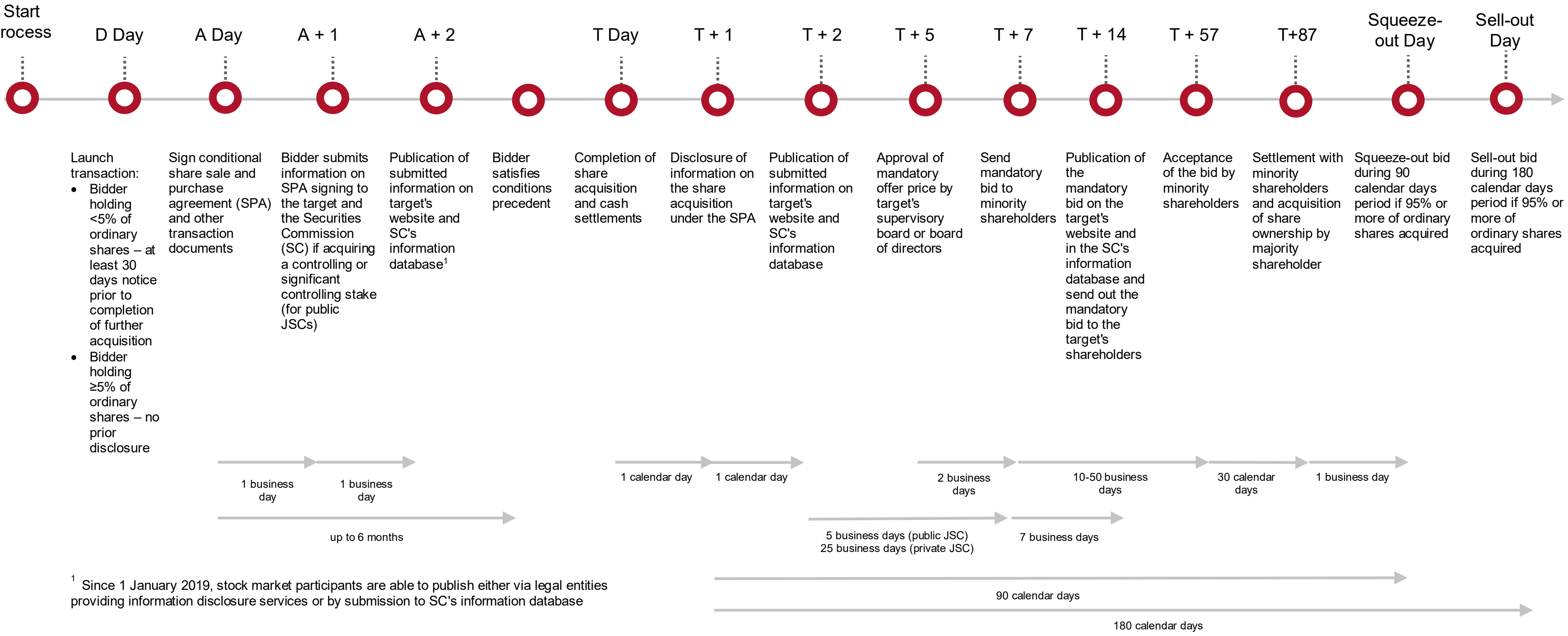
Step
1. Preparatory stage:

Step	
	• Preparation for the acquisition by the purchaser (signing of non-disclosure agreement and the term sheet, legal, financial, technical, environmental and other due diligence, and financing), transaction structuring and negotiations on the transaction documents – timing varies depending on the agreement between the purchaser and the seller(s).
2.	Launch of the transaction: • A shareholder (bidder) who holds less than 5% of the ordinary shares of a JSC must disclose its intention to acquire shares (see 3.5 above) at least 30 days prior to completion of any further acquisition of ordinary shares. This obligation only applies in the case of a direct acquisition of the shares of a Ukrainian JSC. • A shareholder (bidder) who holds 5% or more of the ordinary shares of a JSC is not required to disclose its intention to acquire further ordinary shares.
3.	Signing: • Sign the conditional share sale and purchase agreement ("**SPA**") and other transaction documents – timing varies depending on the agreement between the purchaser and the seller(s).
4.	Disclosure of information about the SPA signing: • Submit the information on the SPA signing to the JSC and the Securities Commission within one business day of the signing (as described in 4.1(b) above) if acquiring a controlling or a significant controlling stake. • Publication of submitted information on the JSC's website, in the Securities Commission's information database or through legal entities providing disclosure of information services on behalf of the stock market participants within one business day.
5.	Satisfaction of conditions precedent: • Obtain all required regulatory consents and satisfaction of other conditions precedent – timing depends on the conditions to be fulfilled but typically ranges from several weeks to six months.
6.	Completion of the share acquisition and cash settlements: • Payment of the purchase price by the purchaser and transfer of the shares into the purchaser's securities account – timing varies depending on the agreement between the purchaser and the seller(s).
7.	Disclosure of information on the share acquisition under the SPA: • Notify the JSC on the share acquisition under the SPA within three business days if the new shareholding becomes higher, lower or equal to the threshold of 5, 10, 15, 20, 25, 30, 50, 75 or 95% of the public JSC's voting shares and 5%, 50%, 95% of the private JSC's voting shares.

Step	
	• Submit information about the share acquisition under the SPA to the JSC and the Securities Commission within one calendar day (as described in 4.1(b) above) if acquiring a controlling or a significant controlling stake. • Submit the information on the share acquisition under the SPA to the JSC and the Securities Commission within one business day as described in 4.1(b) above if acquiring 95% or more ordinary shares. • Publication of submitted information on the JSC's website and in the Securities Commission's information database or through legal entities providing disclosure of information services on behalf of the stock market participants within one calendar day.
8.	Approval of the mandatory tender bid price by the JSC's supervisory board or board of directors: • Approve the mandatory offer price by the JSC's supervisory board or board of directors as described in 4.2(a) above within 25 business days (for private JSCs) and five business days (for public JSCs). • Notify the shareholder acquiring a respective stake (or shareholders acting in concert) of the approved price.
9.	Service of the mandatory tender bid to minority shareholders: • Service of the mandatory tender bid to minority shareholders. • Service of the mandatory tender bid to the JSC within two business days. • Publication of the mandatory tender bid on the JSC's website and in the Securities Commission's information database or through legal entities providing disclosure of information services on behalf of the stock market participants and send out the mandatory bid to the JSC's shareholders within seven business days.
10.	Acceptance of the mandatory tender bid by minority shareholders: • Acceptance of the mandatory tender bid by minority shareholders during the acceptance period established in the mandatory tender bid (from 10 to 50 business days).
11.	Settlement with minority shareholders and acquisition of share ownership by majority shareholder within 30 calendar days.
12.	Squeeze-out bid to minority shareholders (subject to prior compliance with mandatory bid under 9 above) or sell out: • **Squeeze-out**: send the squeeze-out bid to the JSC during the 90 calendar day period after disclosure of information on the share acquisition under 7 above. • **Sell-out**: can be exercised by the minority shareholders during 180 calendar days after acquisition of 95% or more of the ordinary shares of a JSC.

Set out below is an overview of the main steps for a takeover in Ukraine.

Takeovers (indicative timeline)



Start process	
D Day	Launch transaction: • Bidder holding <5% of ordinary shares – at least 30 days notice prior to completion of further acquisition • Bidder holding ≥5% of ordinary shares – no prior disclosure
A Day	Sign conditional share sale and purchase agreement (SPA) and other transaction documents
A + 1	Bidder submits information on SPA signing to the target and the Securities Commission (SC) if acquiring a controlling or significant controlling stake (for public JSCs)
A + 2	Publication of submitted information on target's website and SC's information database[1]
	Bidder satisfies conditions precedent
T Day	Completion of share acquisition and cash settlements
T + 1	Disclosure of information on the share acquisition under the SPA
T + 2	Publication of submitted information on target's website and SC's information database
T + 5	Approval of mandatory offer price by target's supervisory board or board of directors
T + 7	Send mandatory bid to minority shareholders
T + 14	Publication of the mandatory bid on the target's website and in the SC's information database and send out the mandatory bid to the target's shareholders
T + 57	Acceptance of the bid by minority shareholders
T+87	Settlement with minority shareholders and acquisition of share ownership by majority shareholder
Squeeze-out Day	Squeeze-out bid during 90 calendar days period if 95% or more of ordinary shares acquired
Sell-out Day	Sell-out bid during 180 calendar days period if 95% or more of ordinary shares acquired

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[1] Since 1 January 2019, stock market participants are able to publish either via legal entities providing information disclosure services or by submission to SC's information database

6. Takeover Tactics

6.1 Inside information

Ukrainian legislation defines " inside information" as any unpublished information about the issuer, its securities or other financial instruments that are in circulation in the organized market place, if the disclosure of such information may significantly affect the value of the relevant financial instruments.

An individual in possession of inside information shall not: (i) conclude any agreements, for its own or third party benefit, for the acquisition or sale of securities or derivatives to which inside information is related; (ii) transfer or give access to such inside information to third parties; or (iii) provide recommendations to any third party regarding the sale or purchase of securities or derivatives with respect to which such individual holds inside information.

6.2 In the event of a bid

Certain announcement requirements apply in the event of a bid (see 3.5).

6.3 Insider dealing and market abuse

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

6.4 Hostile bids

Ukrainian law does not recognize hostile bids as a separate means of obtaining a public company. In practice, hostile bids are uncommon in Ukraine. Some elements of this concept may be contained in a raider attack over a public company. Within the CIS, there have been instances in which rival companies, groups or third parties have used tactics, such as buying out minority shareholder stakes, filing frivolous and vexatious legal claims and/or seeking injunctions from a court to block a company's shares on the securities accounts, which would prevent its shareholders from taking any actions requiring the approval of the shareholders in a general meeting, including the payment of dividends or entering into certain major business transactions.

Currently, there is no specific mechanism established by law enabling the company to defend itself against hostile bids.

6.5 Common anti-takeover defense mechanisms

In 2023, the JSC Law introduced a new anti-takeover defense mechanism. Under this mechanism, if a minority shareholder receives a squeeze-out bid (as described in (c) above), such shareholder (alone or in concert with others) has the right to submit a counterbid within 20 business days of receiving the initial bid. The counterbid shall be substantially similar in content to the squeeze-out bid but shall offer a price at least 5% higher than the squeeze-out bid. The majority shareholder and other shareholders may then submit subsequent counterbids, each increasing the price by at least 5% over the last bid.

The JSC Law also allows private JSCs to completely disapply or to establish different rules in their charters regarding the acquisition of controlling stakes or dominant controlling stakes (more than 50%, or more than 95%), and the squeeze-out and sell-out procedures, subject to having complied with the majority voting requirements set out in the law as described in 3.1 above.

The shareholders of JSCs may also conclude shareholder agreements on exercising their voting rights and to establish additional restrictions in the case of the transfer of shares. However, such agreements cannot require shareholders to vote in accordance with instructions from the JSC's management bodies.

The buy-back of shares, cross-shareholdings, increased quorum and supermajority decisions may be also considered by the shareholders as anti-takeover defense mechanisms.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

The holder of 95% or more ordinary shares (shareholders acting in concert) may launch the squeeze-out procedure and force remaining minority shareholders to sell their shares to such stakeholder. The squeeze out can be launched only after the majority shareholder has complied with the mandatory bid procedure as detailed in 4.2(a) above.

The main steps to conduct a squeeze-out include:

- opening an escrow account prior to launching the squeeze-out bid to minority shareholders;
- squeeze-out bid made to minority shareholders;
- publication of the squeeze-out bid on the JSC's website and in the Securities Commission's information database within one business day of the bid;
- imposing restrictions on transactions in the shares of minority shareholders within two business days of the bid;
- waiting for the expiration of the 20-business-days period during which minority shareholders may submit a counterbid (see 6.5);
- transfer of funds by the acquiring shareholder to escrow account; and
- lifting restrictions and transferring shares to the acquiring shareholder.

7.2 Sell-out

After disclosure of information on the acquisition by a shareholder (including persons acting in concert) of 95% or more of the ordinary shares of a JSC, and if a squeeze-out procedure has not been initiated, the minority shareholders may launch the sell-out procedure within 180 calendar days.

The main steps to conduct a sell-out are:

- sell-out requirement by the minority shareholder(s):
    - minority shareholder(s) sends the sell-out request to the JSC;
    - JSC sends a copy of the sell-out requirement to the holder of 95% or more of the ordinary shares of a JSC within one business day after receipt of the sell-out request;
    - the sell-out right cannot be exercised during the squeeze-out procedure;
- approval of the sell-out price by the JSC's supervisory board or board of directors:
    - JSC's supervisory board or board of directors approves the sell-out price within 25 business days of receipt of the first sell-out request from the minority shareholder(s);
    - JSC notifies both the minority shareholder (who submitted the sell-out request) and the holder of 95% or more ordinary shares (including

shareholders acting in concert) of the approved sell-out price within one business day after approval of the sell-out price; and

- payment of the sell-out price and acquisition of share ownership by acquiring shareholder within 20 business days of receipt of the approved sell-out price from the JSC.

8. Privatization

Privatization of state-owned enterprises is subject to separate regulation. This is mainly based on the Law of Ukraine "On Privatization of State and Municipal Property" dated 18 January 2018, No. 2269-VIII.

9. Contacts within Baker McKenzie

Viacheslav Yakymchuk and Andrii Moskalyk in the Kyiv office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Ukraine.

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United Kingdom

1. Overview

The UK takeover market is well established and highly developed, with the regulatory framework having been in place for more than 50 years and a substantial body of market practice having formed. While levels of activity have not yet returned to those seen prior to the global financial crisis, the market remains active with 56 firm bids being launched in 2024 (57 in 2023), the significant majority (91%) of which were recommended. A significant proportion of the bids for UK companies are made by non-UK bidders and the open market ethos of the UK means that UK targets remain attractive to overseas bidders. Private equity bids have become more prevalent in recent years, with approximately 43% of the firm bids made in 2024 (63% in 2023) being private equity bids and bids backed by other funds and investment companies. Other recent trends include a greater number of competitive situations and more offers where share consideration (listed or unlisted) is offered, often either in combination with, or as an alternative to, cash.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of the laws relating to public takeover bids applicable in the UK can be found in the City Code on Takeovers and Mergers ("**Takeover Code**"). The Takeover Code applies to all offers, however effected, for:

- companies which have their registered offices in the UK, the Channel Islands or the Isle of Man ("**UK Code Jurisdictions**") if any of their securities carrying voting rights are admitted to trading on a regulated market, e.g., the London Stock Exchange's (LSE) market for listed securities, or a multilateral trading facility, e.g., AIM in the UK, or on any stock exchange in the Channel Islands or the Isle of Man;

- public companies considered by the Panel to be resident in any of the UK Code Jurisdictions. A company will be resident in one of these jurisdictions if it has its registered office there and is considered by the Panel to have its place of central management or control in one of these jurisdictions; and

- private companies resident in one of the UK Code Jurisdictions if, among other things, any of their securities have been admitted to trading on a regulated market or multilateral trading facility in the UK at any time during the last 10 years.

Note, however, that the jurisdiction of the Takeover Code is due to change with effect from February 2025 (see section 2.5 below). In addition, the Takeover Code will apply to other transactions which may effect a change or consolidation of control of the target company.

2.2 Other rules and principles

While the Takeover Code contains the main legal framework for public takeover bids in the UK, there are a number of additional laws, rules and principles that should be taken into account when preparing or conducting a public takeover bid, such as:

- relevant company law (in the UK, this would primarily be contained in the Companies Act 2006);

- the Financial Services and Markets Act 2000 (FSMA) and the numerous items of subordinate legislation and rules created under it, together with the Financial Services Act 2012 ("**FSA**") regulate dealing in and advising on investments, the contents of listing documents, issues of shares, market abuse and financial promotion in relation to investments and the general supervision and control over UK financial markets;

- the Prospectus Rules, UK Listing Rules and Disclosure Guidance and Transparency Rules made by the Financial Conduct Authority (FCA) under Part VI of FSMA;
- the rules relating to insider dealing and market abuse. In addition to those listed above, these include the EU Market Abuse Regulation (Regulation 596/2014) as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 ("**Market Abuse Regulation**") and related EU guidance as well as the Criminal Justice Act 1993 (see 6.2); and
- the rules and regulations regarding merger control and national security. These rules and regulations are not further discussed in this chapter (except for the brief description of foreign ownership restrictions in section 2.6).

2.3 Supervision and enforcement by the Takeover Panel

Public takeover bids are subject to supervision and control by the Takeover Panel. The Panel has a number of powers to supervise and enforce compliance with the Takeover Code, including the power to censure parties publicly for non-compliance and/or to report on offenders' conduct to regulatory authorities, including the FCA, which in turn could take further disciplinary or enforcement action.

In extreme cases, the Panel could publish a statement that, in its opinion, the offender is not likely to comply with the Takeover Code. This could lead to the FCA and certain professional bodies obliging their members not to act for the person in question in a transaction subject to the Takeover Code.

The Panel requires the Takeover Code to be observed in the spirit as well as in the precise wording by all persons engaged in takeovers, including advisers, and applies the Takeover Code flexibly in order to ensure that shareholders are treated fairly, takeovers are conducted in an orderly manner and the integrity of the financial markets is maintained. The Panel strongly encourages early and regular consultation and has the power to grant, in certain cases, exemptions from the application of the rules that would otherwise apply.

2.4 General principles

The following general principles apply to public takeovers in the UK:

- all holders of the securities of a target company of the same class must be afforded equivalent treatment and if a person acquires control of a company, the other holders of securities must be protected;
- the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of the securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
- the board of the target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- false markets must not be created in the securities of the target company, the bidder company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

- a bidder must not announce an offer until after ensuring that they can fulfil in full any cash consideration and taking all reasonable measures to secure the implementation of any other type of consideration; and
- a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2.5 Proposed reforms

(a) The Takeover Code

The Panel regularly issues practice statements to provide informal guidance as to how they normally interpret and apply relevant provisions of the Takeover Code in certain circumstances. In addition, from time to time the Panel issues consultation papers regarding proposed changes to the Takeover Code. Having issued a consultation paper and considered responses, the Panel will then issue a Response Statement setting out the rule changes and their rationale based on the consultation and responses.

(b) Narrowing of the jurisdiction of the Takeover Code

The Panel consulted in 2024 on proposals to narrow the jurisdiction of the Takeover Code such that fewer companies will be subject to the Takeover Code. Following the consultation process, a Response Statement was issued confirming that the changes will take effect from 3 February 2025. With effect from that date, the Takeover Code will apply only to companies with their registered office in the UK, Channel Islands or Isle of Man and whose securities are admitted to trading in the UK, Channel Islands or Isle of Man (referred to as UK-listed companies) or which were previously UK-listed. There will be a two year "run off" period for companies that cease to be listed, and a transitional period at the same time for companies that are currently within the jurisdiction of the Takeover Code but will fall outside the narrowed scope, during which these companies will continue to be subject to the Takeover Code. The transitional arrangements will cease to have effect on 3 February 2027.

2.6 Foreign Investment Restrictions

The UK National Security and Investment Act (NS&I Act) entered into force on 4 January 2022. This legislation introduced a standalone foreign investment review regime for transactions that raise national security issues in the UK. Mandatory notification is required for deals that fall within 17 specified sensitive sectors: (a) Advanced Materials; (b) Advanced Robotics; (c) Artificial Intelligence; (d) Civil Nuclear; (e) Communications; (f) Computing Hardware; (g) Critical Suppliers to Government; (h) Critical Suppliers to the Emergency Services; (i) Cryptographic Authentication; (j) Data Infrastructure; (k) Defense; (l) Energy; (m) Military and Dual-Use; (n) Quantum Technologies; (o) Satellite and Space Technologies; (p) Synthetic Biology (formerly Engineering Biology); and (q) Transport.

The trigger events for mandatory notification are:

- The acquisition of more than 25 per cent, more than 50 per cent, or 75 per cent or more of the votes or shares in a qualifying entity (covers a range of legal structures, including companies, limited liability partnerships and trusts); or
- The acquisition of voting rights enabling or preventing the passage of any class of resolution governing the affairs of the qualifying entity.

For mandatory notifications, clearance must be obtained before the transaction completes. Where a mandatory notification has not been made, the UK Government may call-in the deal for review at any point in the future point.

The trigger events described above in relation to deals that fall outside of the 17 mandatory sectors may be voluntarily notified for approval. In addition, the following trigger events may be voluntarily notified:

- The acquisition of material influence over a qualifying entity's policy; or
- The acquisition of a right or interest in, or in relation to, a qualifying asset (covers both tangible assets such as land or moveable property, and intangible assets such as IP)) providing the ability to use or control the asset (either entirely or to a greater extent).

Outside of the 17 mandatory sectors, the UK Government has the ability to call in a deal for review up to five years from the trigger event.

At the end of an assessment period, the UK Government will either clear, impose conditions on, or unwind or block an acquisition. The regime has a very broad UK nexus test. Non-UK based target entities can be caught where they (a) carry on activities in the UK or (b) supply goods or services to persons in the UK. Assets outside the UK are covered if they are used in connection with the carrying on of activities in the UK or the supply of goods or services to persons in the UK.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

The table below provides an overview of key shareholder rights and obligations that typically apply to different levels of shareholdings within a UK Plc whose shares are listed on the main market of the LSE. Many of these rights may be modified by the company's articles of association. Although this summary is drafted by reference to the percentage shareholding, in certain cases, e.g., the percentage required to pass an ordinary resolution or a special resolution, the relevant percentages will be the percentages of votes passed at the meeting:

- An ordinary resolution requires a simple majority vote of those members voting. Unless the articles of association provide otherwise, an ordinary resolution gives control over the composition of the board of directors, the ability to appoint auditors, to increase capital, the authority to allot shares, the declaration of dividends and control of the company generally.
- A special resolution, which requires a majority of 75% of members voting, is often required in several situations, usually where constitutional change is involved or the articles require it such as to alter the articles of association, to change the company's name, to permit the issue of new shares otherwise than pro rata to existing members, to reduce capital, to approve a voluntary winding up or to approve a reconstruction, a scheme of arrangement or a merger scheme. Given the levels of attendance at most meetings, it may well be possible to block a special resolution with a stake of less than 25%.

For every successive level of shareholding set out below, the rights and obligations attaching to each level of lesser shareholding also apply.

Shareholding	Rights (subject to any contrary or different provisions in the company's articles) and obligations
One share	Rights: • to receive notice of, attend and vote at any general meeting; • to receive, within the required timescales or on demand, the company's last annual accounts and reports; • to request a copy of the company's articles; • to inspect and obtain a copy of the minutes of general meetings; • to inspect any director's service contract or memorandum setting out the terms and conditions of the contract; • to petition the court to order that the company's affairs are being conducted in a manner unfairly prejudicial to the interests of its shareholders or that any actual or proposed act or omission of the company is or would be prejudicial; and • to compel a third party to acquire the shareholder's shares if the third party has acquired 90% of the company's shares under a takeover offer. Obligations: • A public company can require a shareholder to disclose its direct or indirect interest in the company's shares.
1%	The obligation to disclose the holding if the company goes into an offer period and to disclose any dealings during the offer period.
3%	The obligation to disclose direct and indirect holdings of voting rights to the company.
5%	Rights: • to require the directors to call a general meeting; • to require the company to circulate to shareholders a statement of up to 1,000 words in relation to a proposed resolution at a general meeting; • to require the company to notify its shareholders of a resolution to be moved at the next annual general meeting; • to require the company to include any business matter in its annual general meeting (other than a proposed resolution); • to require the directors to obtain an independent report on any poll taken at a general meeting of the company; and • to apply to the court for cancellation of a special resolution to re-register as a private company.

Shareholding	Rights (subject to any contrary or different provisions in the company's articles) and obligations
More than 5%	The right to block the holding of any general meeting convened on less than the required statutory notice.
10%	Rights: - to make an application to the Secretary of State requesting an investigation into the affairs or ownership of the company; and - to require the company to use its power to require any person believed to be interested in the company's shares to provide information with respect to their interests in the company's shares.
More than 10%	The right to block a statutory compulsory purchase following a takeover offer.
15%	The right to apply to the court to cancel any variation of class rights.
20%	Obligations: A shareholder with 20% or more of a listed company will be treated as a "related party" under the UK Listing Rules and any material transactions between the listed company and the shareholder will require an announcement which must include a "fair and reasonable" opinion from the company's financial adviser sponsor.
More than 25%	The right to deny the remaining shareholders the ability to pass a special resolution.
30%	- Any acquisition taking the purchaser's shareholding to 30% or more may trigger an obligation to make a mandatory bid for the whole of the company.
More than 50%	The right to pass ordinary resolutions.
75%	- The right to pass special resolutions, for example to re-register a public company as a private company. - The ability to delist the company.
90%	If the 90% results from acceptance of a takeover offer, the shareholder(s) of the 90% plus can compel the remaining shareholders to sell their shares.
95%	The right to consent to a general meeting (other than an AGM) of a public company being held at short notice.
100%	The subsidiary can be operated and managed without any of the above constraints imposed by minority shareholders, which also avoids

Shareholding	Rights (subject to any contrary or different provisions in the company's articles) and obligations
	potential claims of unfairly prejudicial conduct being made to the court by minority shareholders.

3.2 Restrictions and careful planning

The Takeover Code contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder (see 6.1), announcements of a potential takeover bid by a bidder or a target company and prior due diligence by a potential bidder. Some careful planning is therefore necessary if a potential bidder or target company intends to start a process that may lead to a public takeover bid.

3.3 Acting in concert

The Takeover Code (and, in different ways, the FCA's Disclosure Guidance and Transparency Rules) contains provisions requiring persons who "act in concert" to be treated as one person. Persons are treated as acting in concert where, under an agreement or understanding (however informal), they co-operate to obtain or consolidate control of a company or to frustrate the successful outcome of an offer for a company. Persons will also be presumed and/or deemed to be acting in concert where they have any of a number of specified relationships with one another (e.g., companies within the same group, their directors and the immediate family of such directors). Therefore, in many cases in the rules, a reference to a person acquiring shares or taking certain other actions includes persons acting in concert with them.

Where the bidder is a specially formed offer company, or a subsidiary company, many of the Takeover Code requirements will apply to the ultimate controller(s) of the bidder as well as to the bidder itself. Where a consortium has been formed to make an offer, careful thought should be given at an early stage as to which members of the consortium will be classified as joint bidders and which might instead be classified as concert parties of the bidder(s). The Panel must be consulted before any acquisition of shares by a consortium. Whilst certain provisions of the Takeover Code will apply similarly to both bidders and their concert parties, there are other provisions which will apply to one but not the other. For example, whilst a bidder who already holds shares in the target falls outside the restrictions on making "special deals" with target shareholders, a concert party of the bidder will be caught by such restrictions. Conversely, the offer document will be required to contain significantly more detailed disclosure on the bidder(s) than on any concert parties.

3.4 Insider dealing and market abuse

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable (see 6.2). In addition to insider dealing, the rules prohibit, amongst other things, improper disclosure of inside information and misuse of information.

3.5 Secrecy, announcements, offer periods and the "put up or shut up" rule

Before any public announcement of a bid, the Takeover Code requires absolute secrecy. The object of this rule is to avoid the risk of a false market. Agreed code names should therefore always be used for all parties in place of their real names from the moment any takeover is under consideration. Advisers are required to warn their clients of the utmost importance of maintaining secrecy. The Takeover Code requires a bid to be put forward, in the first instance, to the board of the target. The identity of the bidder must be disclosed.

A number of provisions of the Takeover Code apply only during an "offer period". This is the period starting from the first announcement of a bid or of a possible bid until either (i) all announced bids and potential bids have lapsed or been withdrawn or (ii) the bid has completed. The fact that the first announcement will commence an offer period makes the timing of this announcement particularly important.

An announcement is required by the Takeover Code:

- when a firm intention to make a bid is notified to the target board by or on behalf of a bidder, irrespective of the target board's attitude to the bid;
- when a person acquires an interest in shares which takes their aggregate interests to 30% or more and they are obliged to make a mandatory bid (see 4.4);
- when, following an approach by or on behalf of a potential bidder to the target board, there is rumor and speculation or an untoward (generally 5% or more) movement in the target's share price;
- when, after a potential bidder first actively considers a bid but before an approach has been made to the target board, the target is the subject of rumor and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential bidder's actions (whether through inadequate security or otherwise) which have led to the situation;
- when negotiations or discussions are about to be extended beyond a very restricted number of people, i.e., outside those who need to know in the companies concerned and their immediate advisers; or
- when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one or more potential bids, and:
- the company is the subject of rumor and speculation or there is an untoward movement in its share price; or
- the number of potential purchasers or bidders approached is about to be increased to include more than a very restricted number of people.

Before a potential bidder approaches the target board, the potential bidder is responsible for making any required announcement. Following an approach to the target board, the target will be responsible for making any required announcement unless it has unequivocally rejected any approach (in cases of doubt, the Panel should be consulted).

Such an announcement (known as a "**possible offer announcement**") need only be a short announcement stating, for example, that the target has received an approach "which may or may not lead to an offer being made for the company". However, any announcement by the target must disclose the identity of all potential bidders who have approached it, unless such approach has been unequivocally rejected, and will specify a 28-day "put up or shut up" deadline by which the potential bidder must clarify its intentions either by stating that it won't make a bid or by making a firm intention announcement committing it to launch a formal bid. This is known as a "2.7 announcement" as it is pursuant to Rule 2.7 of the Takeover Code. While the possible offer announcement could go into more detail, e.g., in respect of the terms of the bid, there may be consequences of doing so under the Takeover Code, e.g., the bidder may be held to those terms, and careful thought will need to be given to the wording and consequences of any announcement.

A potential bidder can generally avoid making an announcement when there is rumor or speculation regarding its intentions by stopping active consideration of the bid (subject to Panel dispensation, which is usually granted). The potential bidder may thereafter not actively consider making a bid for the target for a period of six months, except in certain limited circumstances. However, the Panel can still require an announcement to be made if rumor or speculation continues in relation to the potential bidder.

Once a 2.7 announcement of a firm intention to make a bid has been made, a bidder must (unless it obtains Panel consent to do otherwise) proceed with the bid and publish the full and detailed offer document within 28 days after that announcement. However, the offer document can only be published within the 14 days following the 2.7 announcement if the target board consents to this.

A person making a statement that they do not intend to make a bid will normally be bound by that statement for a period of six months. This is often referred to as a "2.8 statement" as it is subject to Rule 2.8 of the Takeover Code. Any such statement must be clear and unambiguous. It is essential that parties involved in making public bids are aware of this principle.

3.6 Disclosure of shareholdings

There are a number of provisions of English law which may restrict a person's ability to deal in shares in UK listed companies and/or give rise to notification and disclosure requirements relating to such dealings or resulting holdings (see also 6.1 and 6.2). In general, the provisions are extremely broadly drafted in order to try to ensure that these rules capture the full range of activities which they are designed to regulate. In particular, definitions such as "dealings", "relevant securities", "financial instruments", "qualifying investments" and "interests in securities" operate in such a way that a wide variety of instruments, e.g., derivatives and options, and transactions, e.g., voting agreements, hedging transactions and even spread bets, will be caught.

The general rules regarding disclosure and transparency apply before the commencement of an offer period. Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The initial disclosure threshold is 3%, whilst further notification is required when further 1% thresholds are reached or crossed, i.e., 4%, 5%, 6%, etc.

In addition, every UK company may, by a notice under section 793 Companies Act 2006, require any person to confirm and give information about their interests in the company's shares. Failure to comply entitles the company to apply for a court order imposing restrictions preventing the relevant party from transferring or voting its shares or receiving dividends. In many cases, companies also have additional disclosure obligations contained in their articles of association.

Within 10 business days after the commencement of an offer period (or at the same time as the 2.7 announcement, if earlier), each of the target and the bidder must make an "Opening Position Disclosure" announcement. This must set out details of positions held by the discloser and its concert parties in relevant securities of the target and (unless the bidder is a cash bidder) the bidder. Each shareholder with 1% or more of the target must also make an Opening Position Disclosure announcement and the target must write to all such shareholders notifying them of this requirement. In practice, it is therefore important for each of the target and the bidder to consider at an early stage in a possible bid process: (a) exactly which individuals and entities are likely to be its concert parties; and (b) how they would quickly and efficiently be able to elicit the information necessary to be included within an Opening Position Disclosure announcement if required.

3.7 Dealings after the commencement of an offer period

After an announcement of a bid or possible bid, the bidder may not sell shares in the target without the Panel's prior consent and only after 24 hours' public notice of such sale. Sales may not be below the bid price.

If, after a firm intention to make a bid is announced, a bidder acquires any interest in shares at a price higher than the bid price, they must increase their bid to the highest price paid.

During the offer period, any further acquisition of shares, however small, by the bidder or anyone acting in concert with it must be announced.

3.8 Due diligence

Due diligence is an important step in the takeover process and on any bid, the bidder and its advisers should undertake an exercise of reviewing key public information on the target, including to confirm corporate structure, pensions liabilities and fully diluted share capital. Due diligence on non- public information will only be available on a recommended bid and will be a significantly less extensive exercise than in a private acquisition context. However, it is market practice for there to be some level of non-public due diligence on a recommended bid (with appropriate safeguards around confidentiality to address potential issues relating to market abuse). This will be important in particular because opportunities for a bidder to withdraw after announcing a firm intention to make a bid are limited, whilst by that stage the bidder must have arranged for any cash consideration to be available to it on a certain funds basis (see 4.5).

The Takeover Code requires all competing bidders to be given, on request, the same information by the target. This rule also extends to information disclosed other than in writing such as site visits and meetings with the target's management. Accordingly, where there is any possibility of a competing bid, a target's board, even one strongly in favor of the bid, must exercise considerable caution in deciding whether or not to provide any or all of the information requested by the bidder.

4. Effecting a Takeover

4.1 Structure of UK takeover bids

The vast majority of takeover bids in the UK are made either by way of a contractual offer, which may be a voluntary offer or a mandatory offer, or by way of a statutory, court approved scheme of arrangement. It is possible, although relatively rare, for the structure of a takeover to be changed from a scheme of arrangement to a contractual offer, or vice versa, part of the way through the transaction.

4.2 Contractual offers

A contractual offer in the UK is made by way of an offer document. The document, constituting an offer to acquire shares, is sent to target shareholders. Shareholders may then accept the offer either by completing and returning a form of acceptance or by electronic acceptance through CREST. If a shareholder accepts, it is bound to transfer its shares to the bidder subject to satisfaction or waiver of the conditions of the offer. In order to acquire 100% of the target's shares using an offer, the bidder needs to acquire 90% of the shares to which the offer relates, following which the bidder can utilize a compulsory acquisition procedure under the Companies Act 2006 to acquire the remaining shares (see 7.1).

Where this method is adopted in preference to a scheme of arrangement, this is often because it does not involve a court approval process and has certain other advantages over a scheme:

- in order for the offer to succeed (that is, for the bidder to acquire control of the target), the bidder needs to achieve any level over 50% of the voting share capital as compared to (broadly) a 75% threshold under a scheme;
- the timetable to achieve control can be much shorter than in the case of a scheme and, in a recommended offer, control can frequently be obtained within a month;
- the target board effectively controls the implementation of a scheme whereas the bidder has effective control of the contractual offer process; and
- a contractual offer, unlike a scheme, can be made without the co-operation of the target board.

4.3 Schemes of arrangement

A scheme of arrangement is a mechanism provided by the Companies Act 2006 under which a takeover can be effected by the passing of resolutions by the shareholders of the target company and with the approval of the court. A scheme requires the approval of a majority in number representing 75% in value of the target shareholders voting on the necessary resolutions. However, once approved, all shareholders are bound by the scheme. A scheme is a process promoted and undertaken by the target, requiring the full co-operation of the target and cannot, therefore, be used in hostile situations.

Where a scheme of arrangement is adopted in preference to a contractual offer (as is usually the case on recommended bids), this is often due to the following advantages a scheme has:

- whilst a scheme may be slower in terms of acquiring effective control, i.e., 50%, it will generally be quicker in achieving 100%. This means that the target can be re-registered as a private company and, thereafter, give any necessary financial assistance much more quickly than under an offer;
- a scheme requires a lower threshold to achieve 100% (a vote of a majority in number, representing 75% in value of shareholders voting on the scheme) than a contractual offer ("squeeze out" threshold of 90% of all shares to which the offer relates);
- a scheme, unlike a contractual offer, will not generally constitute an "offer for securities" and, therefore, can often avoid certain procedural and other difficulties of acquiring the shares of overseas shareholders; and
- if share consideration is to be offered, a scheme, unlike a contractual offer, may allow a bidder not to issue a prospectus in connection with the offer.

4.4 Mandatory bids and Rule 9 waivers

Where a person acquires an interest in shares carrying 30% or more of the voting rights of a company, or where a person already has an interest in shares carrying 30% or more, but less than 50% of the voting rights, and acquires a further interest which increases their holding of such rights, they must make an offer to all shareholders to acquire their shares. Such a mandatory offer must:

- normally be unconditional, apart from a condition that acceptances result in the bidder holding 50% or more of the voting shares in the target; and

- be in cash or accompanied by a cash alternative at not less than the highest price paid by the bidder during the offer period and within the 12 months preceding its commencement.

Certain dispensations from this rule are available from the Panel on application. The Panel will normally waive the mandatory bid obligation under the so-called "Rule 9 waiver" exemption where the mandatory bid requirement arises as a result of the issue of new securities by the "target" as consideration for an acquisition or as a result of a cash subscription, provided that a majority of independent shareholders approve this in a poll in a general meeting. The target must prepare a circular to be sent to its shareholders which describes the proposed acquisition and share issuance. This circular must be pre- approved by the Panel.

The Panel will not normally waive the obligation to make a mandatory bid if the person to whom the new securities are to be issued has acquired an interest in shares in the target in the 12 months prior to the publication of the circular relating to the Rule 9 waiver but subsequent to negotiations, discussions or the reaching of an understanding or an agreement with the directors of the target in relation to the proposed issue of new securities. A waiver granted by the Panel will also be invalidated if any acquisitions of interests in shares in the target are made in the period between the publication of the circular and the shareholders' meeting to approve the Rule 9 waiver.

4.5 Conditionality, certain funds and minimum price

The Takeover Code states that a bidder should announce a bid "only after the most careful and responsible consideration and when the bidder has every reason to believe that it can and will continue to be able to implement the offer". The Panel has specifically stated that the withdrawal of a bid after its announcement is a most undesirable step which should not normally be considered, except in the most extreme circumstances. Accordingly, even though a bid (other than a mandatory bid) is usually subject to extensive conditions, the Panel will apply a very high materiality test when agreeing to allow the bidder to rely on a condition and withdraw.

The Takeover Code states that a bidder should only announce a bid after ensuring that it can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration. The Panel does not normally permit a bid to be subject to any financing condition. As a result, both the bidder and its financial advisers have obligations under the Takeover Code to conduct all possible due diligence before making an announcement of a bid. In addition, the announcement of a firm intention to make a cash bid must include a statement of confirmation by the bidder's financial adviser that sufficient resources are available to the bidder to satisfy full acceptance of the bid. The financial adviser giving this confirmation could itself be required to provide the cash consideration if it did not take all reasonable steps to ensure that the cash was available. This means that if the bid is to be wholly or partially funded by drawing down on debt facilities, the ability to draw down on such debt facilities must normally be wholly unconditional, or conditional only on sufficient acceptances of the bid being received.

Except where the bidder or anyone acting in concert with the bidder acquires or has acquired any interest in securities of the target, there are no restrictions on the nature of consideration or price at which the bid can be made (see 6.1).

4.6 Offer documents

The Takeover Code contains a number of specific provisions on the contents of offer documents. This includes scheme documents. In particular, the offer document must satisfy the highest standards of care and accuracy, fairly and adequately present all information and give target shareholders sufficient information to reach a properly informed decision.

The Takeover Code expressly requires the directors of the bidder and, where appropriate, the target to accept responsibility for the information contained in the document. The directors are required to state "that to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case) the information contained in the document is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information". In addition, under the Companies Act 2006, the bidder and any director, officer or member of the bidder will commit a criminal offence if it publishes or causes to be published an offer document for a company whose securities are admitted to trading on a regulated market which does not comply with the relevant takeover rules, if they knew that the document did not comply with or were reckless as to whether it complied with such rules. It is therefore essential that the utmost care is exercised in the drafting and approval of offer documents.

The Takeover Code requires the offer document to be sent or made available to all shareholders (as well as to employee representatives or employees) of the target, including overseas shareholders, unless (in the case of shareholders located outside the UK, the Channel Islands and the Isle of Man) there is sufficient objective justification for not doing so. It is therefore important to examine the target shareholder register at an early stage and consider whether any laws or regulations of an overseas jurisdiction in which target shareholders are resident impose particular requirements that either entail additional work to ensure compliance, or are sufficiently onerous to enable the bidder to obtain a dispensation from the Panel from having to make the document available to shareholders in that jurisdiction. The Panel will not normally grant a dispensation in relation to residents of the UK, the Channel Islands or the Isle of Man but, in certain circumstances, will grant a dispensation in relation to another country where there may otherwise be a significant risk of civil, regulatory or, particularly, criminal exposure for the bidder or the target.

Where the bidder wants the management of the target to retain a financial interest following the bid, the Panel's consent to the arrangements giving effect to this must be obtained. As a condition of its consent, the Panel will require that the target's financial adviser publicly states that, in its opinion, the arrangements are fair and reasonable and that such arrangements are approved by a vote of independent shareholders at a general meeting of the target. Where the bidder wants to make other arrangements to incentivize management, the Panel's consent will again be required but will not be conditional on shareholder approval, although a public fair and reasonable opinion from the target's financial adviser will again be required.

4.7 Target board responsibilities and prohibition on frustrating action

The target board must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of a bid.

During the course of a bid, or even before the commencement of an offer period, if the board of the target has received an approach from a potential bidder, the board must not take any "restricted action" or any other steps which could effectively frustrate the bid. "Restricted actions" include any of the following, to the extent it is not in the ordinary course of the target's business:

- Issuing shares or securities carrying rights of conversion into or subscription for shares;
- Redeeming or buying back shares or securities carrying rights of conversion into or subscription for shares;
- Granting options over or awards in respect of shares;
- Disposing or acquiring (in one or more transactions) assets of a material amount; or
- Entering into, amending or terminating a material contract.

The target board will be allowed to take a restricted action with shareholder consent or with the consent of the Panel, who must be consulted in advance if any proposed action may be restricted. The Panel will normally consent to the proposed action being taken without shareholder consent if, for example, it is in pursuance of a pre-existing contract or obligation, the taking of the action is conditional on the offer being withdrawn or lapsing, or if the bidder consents.

The target board is required to obtain competent independent advice on any bid. The substance of the advice must be made known to shareholders. The target board must also give its own opinion on the bid, including its views on the effects of implementation of the bid on all the company's interests, including, specifically, employment, and its views on the bidder's strategic plan for the target company and its likely repercussions on employment and the locations of the target company's places of business. The target is also obliged to keep employee representatives and pension fund trustees informed of the announcements made and the rights of each of them to append their opinion to the bid documentation.

5. Timeline

The table below contains an indicative timeline summarizing the main steps of a typical UK public takeover bid process for a contractual offer and for a scheme of arrangement. Note that if a competing bid is made, the timetable is reset to that of the competing bid.

Date	Scheme of arrangement	Contractual offer
As early as possible	Book court dates.	
A – 28	Announcement of possible bid and beginning of the offer period (if not already commenced). Except with the Panel's consent, the potential bidder will have 28 days from the date of the possible bid announcement to either (i) announce a firm intention to make a bid or (ii) announce that it will not make a bid unless, upon request from the target, the Panel grants an extension to this deadline.	Announcement of possible bid and beginning of the offer period (if not already commenced). Except with the Panel's consent, the potential bidder will have 28 days from the date of the possible bid announcement to either (i) announce a firm intention to make a bid or (ii) announce that it will not make a bid unless, upon request from the target, the Panel grants an extension to this deadline.
A day	Announce scheme by way of a Rule 2.7 Announcement.	Announce takeover offer by way of a Rule 2.7 Announcement.
A + 5	Issue claim form to commence court meetings, attaching witness statement and draft scheme circular (NB no later than two business days prior to hearing of claim form).	
A + 10	Hearing of claim form seeking directions for convening of shareholder meeting and sanction of court to scheme if it is approved by the meeting.	

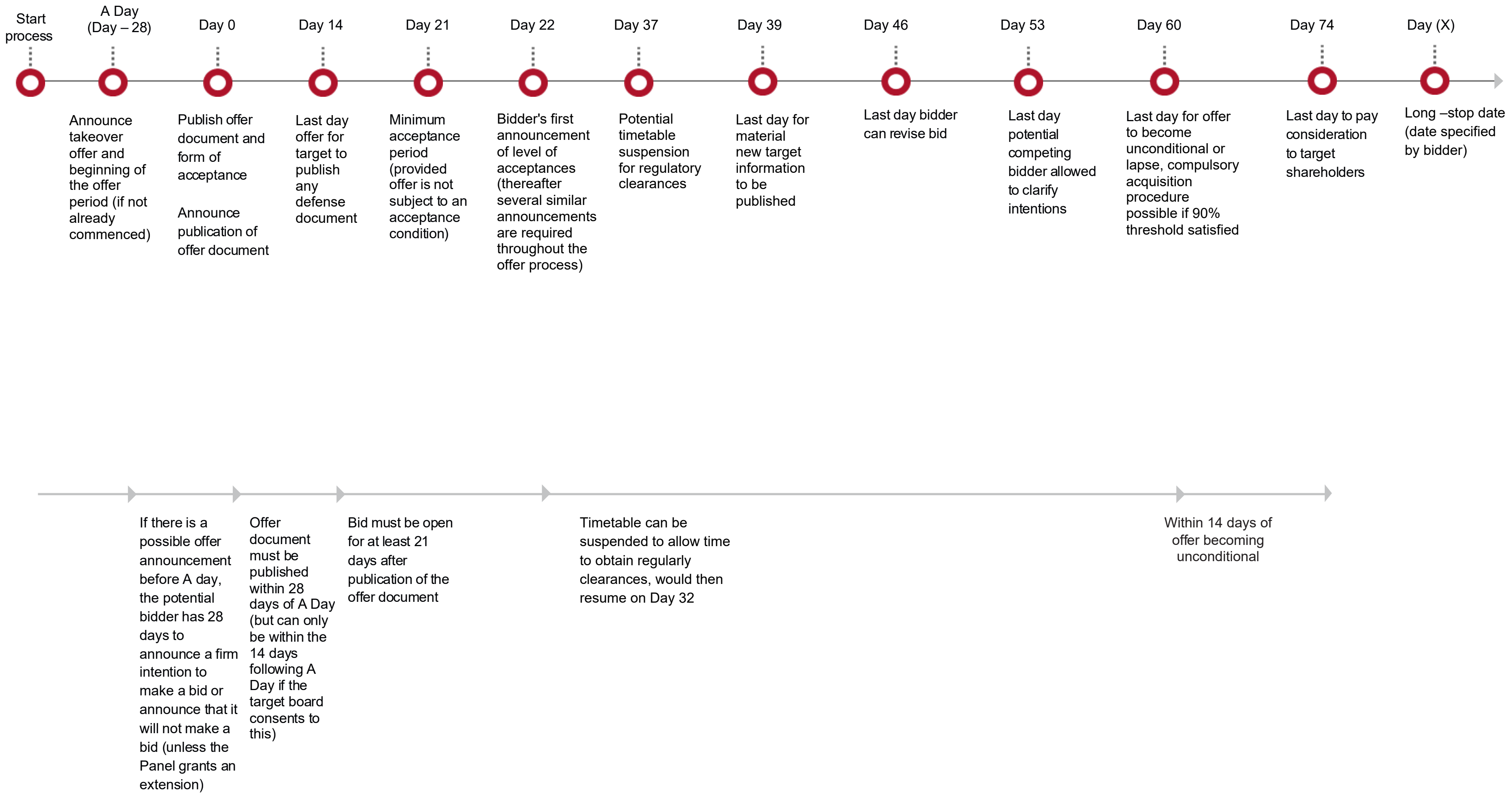
Date	Scheme of arrangement	Contractual offer
	Court orders meeting to be held and adjourns claim form until after meeting.	
D Day	1. Publish scheme circular and proxy form (must be within 28 days of A Day but can only be within the 14 days following A Day if the target board consents to this). 2. Announcement of publication of scheme circular.	1. Publish offer document and form of acceptance (must be within 28 days of A Day but can only be within the 14 days following A Day if the target board consents to this). 2. Announcement of publication of offer document.
D + 7	Last date terms of scheme can be revised (assuming court and shareholder meetings to be held on D + 21).	
D + 14	Last date potential competing bidder usually allowed to clarify its intentions (assuming court and shareholder meetings to be held on D + 21).	Deadline for target to publish defense document (if hostile bid).
D + 19	Latest date for submission of proxies.	
D + 21	First date for court and shareholder meetings to approve scheme can be held.	Earliest date for closing the offer (bid must be open for acceptances until the later of (1) the 21st day after publication of the offer document) and (2) the date on which the offer becomes unconditional or lapses.
D + 22	1. Target announces results of meetings by 8:00 a.m. 2. Target files a copy of the special resolution with Companies House. 3. Complete report of Chair of meeting to court. 4. Swear and file witness statement as to service of notices convening court	Bidder's first announcement of level of acceptances by 8:00 a.m. (thereafter several similar announcements are required throughout the offer process).

Date	Scheme of arrangement	Contractual offer
	meeting and general meeting, and result of meetings.	
D + 30	Advertise court hearing seven clear days in advance.	
D + 37		Potential suspension of offer timetable where there remain outstanding regulatory clearances. A suspended offer timetable would resume on the date when the last relevant regulatory condition is satisfied or waived, which would normally become D + 32.
D + 38	1. Court hearing to sanction scheme (all scheme conditions must have been fulfilled). 2. Target announces results of court hearing.	
D + 39	1. File court order sanctioning scheme at Companies House. 2. Scheme becomes effective. 3. Target or bidder announces scheme has become effective. 4. End of offer period.	Last date for material new target information to be published.
D + 46		Latest date bidder can revise the bid.
D + 53	Latest day to pay consideration to target shareholders (within 14 days of scheme becoming effective).	Last date potential competing bidder usually allowed to clarify its intentions.
D + 60		Last date by which the offer must become unconditional or lapse. Offer period ends.
D + 74		Latest day to pay consideration to target shareholders (within 14 days of offer becoming unconditional).

Date	Scheme of arrangement	Contractual offer
Later date	The scheme document must include a "long-stop date", on which the scheme will lapse if it has not become effective.	The offer document must include a "long-stop date", on which the offer will lapse if: (i) insufficient acceptances have been received to satisfy the acceptance condition; or (ii) with the consent of the Panel, a regulatory condition has not been satisfied or waived.
Thereafter		Bidder can undertake compulsory acquisition procedure if it achieves 90% or more acceptances of offer.

Set out below is an overview of the main steps for a takeover offer and a scheme of arrangement in the UK.

Takeover offer (indicative timeline)



Start process

A Day (Day – 28)
Announce takeover offer and beginning of the offer period (if not already commenced)

Day 0
Publish offer document and form of acceptance

Announce publication of offer document

Day 14
Last day offer for target to publish any defense document

Day 21
Minimum acceptance period (provided offer is not subject to an acceptance condition)

Day 22
Bidder's first announcement of level of acceptances (thereafter several similar announcements are required throughout the offer process)

Day 37
Potential timetable suspension for regulatory clearances

Day 39
Last day for material new target information to be published

Day 46
Last day bidder can revise bid

Day 53
Last day potential competing bidder allowed to clarify intentions

Day 60
Last day for offer to become unconditional or lapse, compulsory acquisition procedure possible if 90% threshold satisfied

Day 74
Last day to pay consideration to target shareholders

Day (X)
Long –stop date (date specified by bidder)

If there is a possible offer announcement before A day, the potential bidder has 28 days to announce a firm intention to make a bid or announce that it will not make a bid (unless the Panel grants an extension)

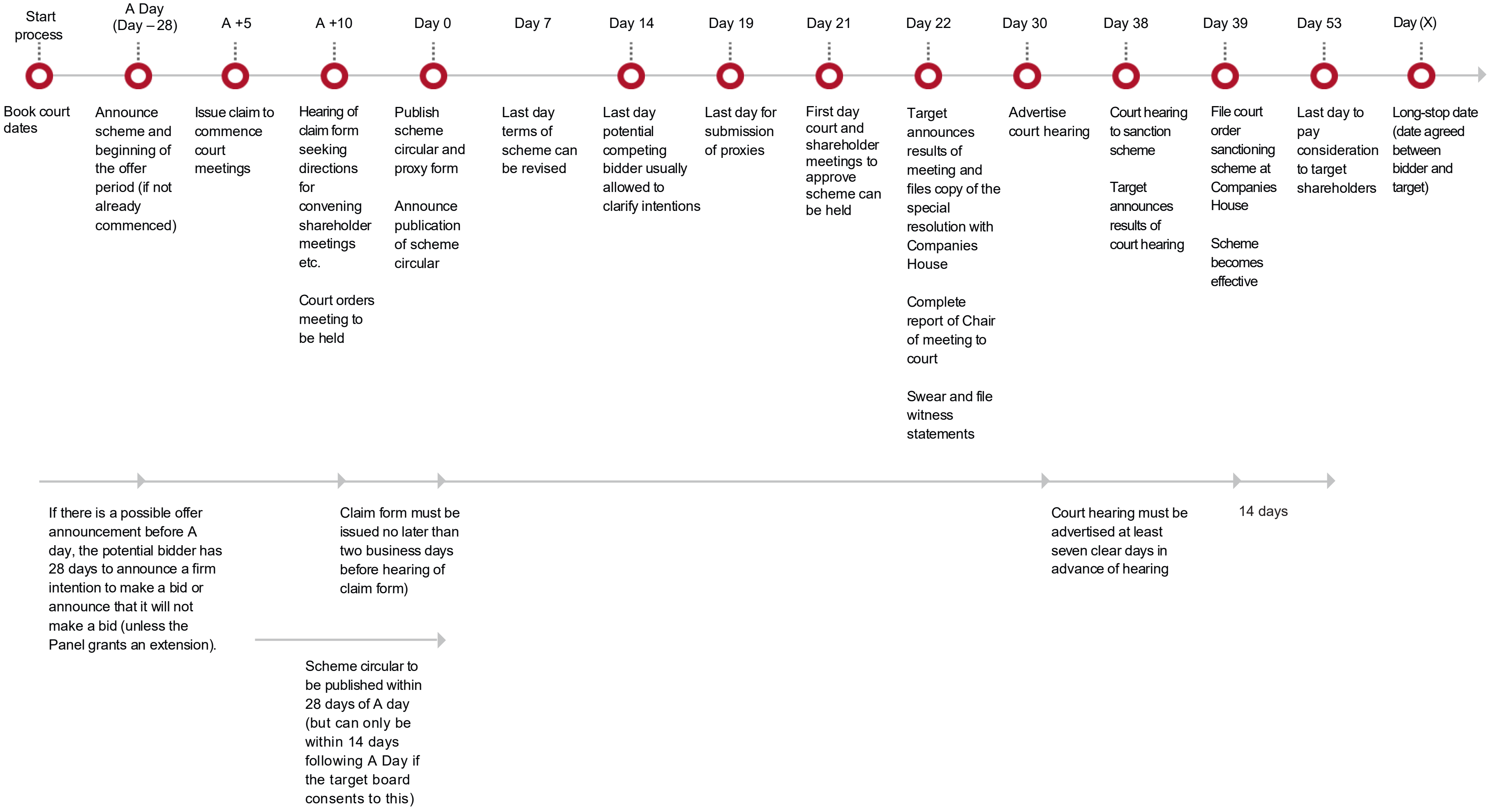
Offer document must be published within 28 days of A Day (but can only be within the 14 days following A Day if the target board consents to this)

Bid must be open for at least 21 days after publication of the offer document

Timetable can be suspended to allow time to obtain regularly clearances, would then resume on Day 32

Within 14 days of offer becoming unconditional

Scheme of arrangement (indicative timeline - assuming court and shareholder meetings held on Day 21)



Start process	Book court dates
A Day (Day – 28)	Announce scheme and beginning of the offer period (if not already commenced)
A +5	Issue claim to commence court meetings
A +10	Hearing of claim form seeking directions for convening shareholder meetings etc. Court orders meeting to be held
Day 0	Publish scheme circular and proxy form Announce publication of scheme circular
Day 7	Last day terms of scheme can be revised
Day 14	Last day potential competing bidder usually allowed to clarify intentions
Day 19	Last day for submission of proxies
Day 21	First day court and shareholder meetings to approve scheme can be held
Day 22	Target announces results of meeting and files copy of the special resolution with Companies House Complete report of Chair of meeting to court Swear and file witness statements
Day 30	Advertise court hearing
Day 38	Court hearing to sanction scheme Target announces results of court hearing
Day 39	File court order sanctioning scheme at Companies House Scheme becomes effective
Day 53	Last day to pay consideration to target shareholders
Day (X)	Long-stop date (date agreed between bidder and target)

If there is a possible offer announcement before A day, the potential bidder has 28 days to announce a firm intention to make a bid or announce that it will not make a bid (unless the Panel grants an extension).

Claim form must be issued no later than two business days before hearing of claim form)

Court hearing must be advertised at least seven clear days in advance of hearing

14 days

Scheme circular to be published within 28 days of A day (but can only be within 14 days following A Day if the target board consents to this)

6. Takeover Tactics

6.1 Stake building

One tactic a potential bidder may consider is to build up a stake in the target company. This would have a number of potential benefits, including indicating to the target's board the seriousness of the bidder's intentions, lowering the overall cost of acquiring the shares in the target and potentially deterring competing bidders. However, before deciding to acquire any interests in the securities of the target, the bidder should consider the following issues and implications:

- The bidder should not acquire any interest in target securities at a time when to do so would constitute market abuse or insider dealing (see 6.2). This is likely to be the case if the bidder is in possession of non-public due diligence information which includes inside information and the bid has not yet been made. In addition, the Takeover Code prohibits any person, other than the bidder, who has confidential, price-sensitive information concerning a bid or contemplated bid from dealing in the securities of the target between the time when there is reason to suppose that an approach or bid is contemplated and the announcement or termination of such discussions.

- Any acquisition (even of one share) may be prohibited or may result in a requirement for a mandatory bid to be made for the target (see 4.4) if that acquisition takes the shareholder's aggregate holding to 30% or more or, if the shareholder is already interested in more than 30% but less than 50%, that acquisition increases the percentage of shares carrying voting rights in which the shareholder is interested.

- Any dealing by the bidder (or anyone acting in concert with it) must be publicly disclosed either prior to or at the start of the offer period (see 3.6).

- An acquisition may impact on the nature and level of consideration that the bidder may then offer in a takeover bid:

- If the bidder (or any person acting in concert with it) acquires any interest in shares during the offer period, any bid must be in cash or accompanied by a cash alternative at not less than the highest price paid by the bidder during the offer period and within the 12 months prior to the offer period; and

- If shares carrying 10% or more of the voting rights are acquired in exchange for securities in the three months prior to the offer period and during the offer period, then the bidder will normally be required in its bid to offer the same class of securities to other target shareholders.

- If the bid is structured as a scheme of arrangement, any shares in the target which are held by the bidder cannot be voted on when voting to approve the scheme. Market purchases by the bidder will therefore have the effect of concentrating the voting power of other shareholders in relation to the scheme. This is in contrast to the position where the bid is structured as a contractual offer, where shares purchased by the bidder after the offer is made will count towards the acceptance condition and can therefore be an effective tool for a bidder seeking to ensure its bid succeeds. Note, however, that if the bidder purchases shares before it makes a contractual offer, those shares will not count towards the squeeze out threshold which would enable it to acquire the shares of the remaining minority shareholders (see 7.1).

6.2 Insider dealing and market abuse

It is important that all parties involved in a potential takeover bid in the UK are aware of and comply with the rules and regulations on insider dealing and market abuse.

The UK has stringent rules relating to insider dealing. These are contained in the Criminal Justice Act 1993, which makes it a criminal offense for a person who has inside information to deal or to encourage others to deal on the basis of inside information or to disclose inside information. Inside information is:

- specific information;
- relating to a particular company or particular securities;
- which has not been made public;
- but which, if it were made public, would be likely to have a significant effect on the price of the securities.

It is important to note that the rules surrounding inside information, and how this definition is interpreted, are complex and based on EU legislation and that the penalties for infringement can be severe.

Alongside the criminal sanctions against insider dealing and market manipulation, the Market Abuse Regulation contains a civil prohibition on market abuse. The FCA is empowered to decide that certain conduct constitutes market abuse. It can then impose unlimited fines and/ or other penalties. Given that it is based on the EU Market Abuse Regulation, the position on market abuse in the UK will be similar to that in European Economic Area jurisdictions. Of particular relevance will be the prohibitions on insider dealing, improper disclosure of inside information and market manipulation.

6.3 Deal protection and equality of treatment

The Takeover Code includes a general prohibition on inducement fee agreements and other deal protection measures including exclusivity/"no- shop" agreements, implementation agreements and arrangements having a similar or comparable financial or economic effect as an inducement fee. These are collectively termed "offer-related arrangements". There are exemptions that permit:

- a commitment to maintain confidentiality of information;
- a commitment not to solicit employees, customers or suppliers;
- a commitment to provide information or assistance for the purposes of obtaining any official authorization or regulatory clearance;
- irrevocable undertakings and letters of intent (see 6.4);
- any agreement, arrangement or commitment which imposes obligations only on a bidder, e.g., reverse break fee, or its concert parties, other than in the context of a reverse takeover; and
- any agreement relating to any existing employee incentive arrangement, e.g., as to how discretion should be exercised in relation to the number of shares to be issued or the amount of any bonus payable.

There are limited exceptions to the general prohibition on inducement fee arrangements, as follows.

- Where an announcement has been made of a firm intention to make a bid which is (and remains) hostile, the Panel will normally consent to the target entering into inducement fee arrangements with one or more potential "white knight" alternative bidders, provided that (i) the aggregate value of the inducement fee or fees that may be payable must be no more than 1% of the offer value. This is calculated by reference to the competing bid, and (ii) any inducement fee is capable of becoming payable only if a bid is successful.

- In the case of a formal sale process initiated by the target, the Panel will normally consent, prior to any firm intention to make a bid being announced, to the target entering into an inducement fee agreement with one bidder who has participated in that process, subject to the same provisos as to quantum and trigger.
- The Panel may grant a dispensation where the target is in serious financial distress.

The target board and the bidder should always seek detailed legal advice before agreeing any deal protection measures to ensure full compliance with the Takeover Code and applicable legal and regulatory requirements.

For schemes of arrangement, some limited deal protection exists in respect of the process and timetable by virtue of the fact that the target will be required to implement the scheme in accordance with a timetable published in the scheme circular. The target will be able to depart from this timetable if its board ceases to recommend the bid, announces its decision to propose an adjournment to a shareholder meeting or court sanction hearing, or a shareholder meeting or court sanction hearing is actually adjourned. In these situations, the target will need to obtain the approval of the bidder for a new scheme timetable whilst the bidder will be able to make a request to switch to a contractual offer, and the Panel will usually consent to such a request. In order to prevent uncertainty and the bidder being forced to keep open a bid for a protracted period where the initial timetable is departed from, bidders are permitted to include, within the conditions to a scheme, specific dates by which the shareholder meetings and/or court sanction hearings must be held. The dates in such conditions must be more than 21 days after the dates set out in the published agreed timetable for such events.

It is worth remembering that whilst there are significant prohibitions and restrictions in respect of the bidder and target entering into deal protection arrangements, the bidder may derive some comfort from the restrictions on frustrating action to which the target board is subject from an early stage (see 4.7). Bidders will also need to carefully evaluate the advantages and disadvantages of stake building as a means of achieving some level of deal protection (see 6.1).

All shareholders of the same class must be offered equivalent treatment by a bidder and therefore, subject to very limited exceptions, special deals for certain shareholders are prohibited (see 4.6 in relation to arrangements to incentivize management). This equivalence of treatment also extends to equality of information, such that information about parties to a bid must be made equally available to target shareholders at the same time and in the same manner, or as near as possible.

6.4 Irrevocable undertakings

An irrevocable undertaking is an undertaking given by a target shareholder to a bidder where they undertake to accept the bidder's bid for the target company when it is made. Irrevocable undertakings are used so that bidders do not need to purchase the shares directly. There are several reasons why a bidder might not wish to purchase the shares directly, such as the following.

- A bidder who buys the shares will be left with the shareholding if its bid fails.
- Provided that an irrevocable undertaking is correctly drafted, the shares to which it relates can either be (a) voted in favor of the scheme if the bid is structured as a scheme of arrangement, or (b) counted towards the 90% squeeze-out threshold in order to buy out the remaining minority in case of a contractual offer (see 7.1).

- If the bidder buys the shares and as a result obtains 30% or more of the shares in the target, they will be required to make a mandatory bid for the target. By contrast, if the bidder takes an irrevocable undertaking, the shares covered by that irrevocable undertaking will not be counted towards the 30% level for these purposes, provided that the irrevocable undertaking does not give the bidder general control over voting rights.
- A selling shareholder may be more willing to give an irrevocable undertaking than to sell their shares because if they sell, they will not benefit from any revised or increased offer, whereas they would do so by accepting the bid pursuant to the irrevocable undertaking.

On a recommended bid, it is market practice for the target directors, who will generally hold shares and/or options in the target, to give "hard" irrevocable undertakings to support the bid. Such undertakings remain binding even in the event of a competing bid. It is also common for bidders to seek "soft" irrevocable undertakings from the target's major shareholders. These undertakings lapse if a higher competing bid is made above a negotiated threshold. Where these cannot be obtained, the major shareholders may instead be willing to provide non-binding letters of intent in support of the bid. It should be noted that both irrevocable undertakings and letters of intent must be disclosed publicly.

6.5 Anti-takeover defense measures

To fulfil their fiduciary duties, the directors of a UK target company must:

- act in a way that the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole; and
- act within the director's powers and use those powers for the purposes for which they are conferred.

Under the duty to use powers for their proper purpose, it is clear that defensive acts motivated primarily by a desire to entrench management's own position are unlawful. The position on fiduciary duties, combined with the prohibition on frustrating action (see 4.7), means that it is not common in the UK takeover market for target directors to implement particular measures during an offer period. Instead, if the target directors view a bid approach as unwelcome, market practice would be for them to make their case publicly as to why the (potential) bid is unattractive and persuade shareholders not to support it. They would also then generally refuse the bidder access to any non-public due diligence information regarding the company except where they are compelled to grant such access as they have already granted it to another bidder.

7. Squeeze-Out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out

If, by virtue of acceptances of a takeover offer, the bidder acquired or unconditionally contracted to acquire at least 90% in value of the shares to which the offer relates and at least 90% of the voting rights attached to such shares, it can force the remaining minority shareholders to transfer their securities to the bidder at the price offered in the takeover bid.

The compulsory squeeze-out procedure can be used by the bidder within three months from the last day on which the offer can be accepted, by serving a notice to shareholders who have not accepted the offer.

If the takeover is structured as a scheme of arrangement, 100% of the target's share capital will be acquired by the bidder upon the scheme becoming effective, so there would be no need for the squeeze-out procedure.

7.2 Sell-out

If the bidder makes a takeover bid and, by acceptances of the bid and any other acquisitions, holds at least 90% of all the shares in the target carrying at least 90% of the voting rights in the target, then a minority shareholder may require the bidder to acquire their shares in the target.

The bidder is required to give any shareholder notice of their right to be bought out within one month of that right arising. If the notice is given before the end of the period within which the takeover bid can be accepted, it must state that the bid is still open for acceptance. Such notices are unnecessary if the bidder has already provided the shareholder in question with a squeeze-out notice.

Sell-out rights cannot be exercised after the end of the period of three months from the last date on which the bid can be accepted or, if later, three months from the date on which the notice is served on the shareholders notifying them of their sell-out rights.

7.3 Restrictions on acquiring securities or making further bids after the takeover bid period

Except with the Panel's consent, a bidder holding shares carrying more than 50% of the voting rights and the persons acting in concert with the bidder may not make a second bid or acquire any interest in shares in the target on more favorable terms than those made available under the previous takeover bid, during a term of six months as of the end of the takeover bid period. Similarly, an unsuccessful bidder and its concert parties are prohibited (except with the Panel's consent) from announcing a further bid or triggering a mandatory bid obligation for a period of 12 months from the date on which its bid was withdrawn or lapsed.

8. Delisting

The main requirement to delist a company from the LSE's main market is that a special resolution requiring a 75% majority must be passed by shareholders approving the cancellation of the admission of the company's shares to the Official List and to trading on the LSE's market for listed securities. After a successful offer for the entire share capital of a company, the bidder would usually have sufficient voting rights to pass such resolution. Additional procedural requirements are set out in the Listing Rules.

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Robert Adam, Nick Bryans and James Thompson in the London office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in the UK.

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United States

1. Overview

1.1 Background

The US public merger and acquisition market remains the largest and most active public M&A market in the world. To give a sense of scale, according to Mergermarket, of the approximately US$3.4 trillion of deals globally through December 16, 2024, US deals accounted for approximately half of the total, at US$1.7 trillion. According to DealPointData, completed transactions in 2024 involving US public company targets represented approximately US$398 billion in aggregate transaction values, with nearly 150 transactions involving US public company targets ranging from acquisitions of smaller reporting companies for less than US$100 million to, for the largest deal of the year, ExxonMobil's acquisition of Pioneer Natural Resources for approximately US$60 billion. Deal activity appears across a variety of industry sectors, with the most active sectors in 2024 being technology, healthcare, oil & gas, utility & energy, and finance, per Mergermarket.

The most common structures for US public deals are so-called one-step mergers in which target shareholders vote to consummate a statutory merger of an acquirer's merger subsidiary with and into the target public company, with the target public company surviving as a wholly-owned acquirer subsidiary, and so-called two-step mergers by which an acquirer first consummates a tender offer to acquire a sufficient number of target shares in the target public company in a first step to then permit the consummation of a statutory merger in a second step without a vote of remaining minority target public company shareholders. The US public deal market is highly developed and practice is constrained by a combination of state corporate law (most commonly Delaware), federal securities laws and market practice. As a result of such constraints, US public transactions generally require preparation of detailed disclosure documents describing the proposed transaction and any shareholder votes or tenders required to effect the transaction. Transactions can close quickly and expediently for both US and non-US acquirers from a corporate and securities law perspective; however, the antitrust and foreign investment regimes in the United States and elsewhere frequently introduce longer timelines to closing.

1.2 Scope; foreign private issuers

This chapter discusses select legal, regulatory, timing and practical considerations to assist with consideration of a US public M&A transaction, focusing primarily on state corporate law and federal securities law considerations. While circumstances of individual transactions may vary, this summary generally assumes that the US domestic public company that is the target of a proposed acquisition transaction is a corporation (the general term "public company" is used herein), and therefore that the primary equity-holders of such target public company are "shareholders" or "stockholders" (the general term "shareholders" is used herein). The discussion in this chapter concerns acquisitions of public companies organized under the laws of one of the states of the United States. It includes a discussion of certain issues under the corporate and case law of Delaware, the jurisdiction of incorporation of a majority of US-organized public companies.

There are also many non-US companies that are listed on US stock exchanges. Such companies are referred to as foreign private issuers ("**FPIs**"), if they qualify as such under applicable US securities regulations (see "6.1 Tender offer procedures" for additional discussion on determining whether a company qualifies as an FPI). Many, but not all, of the US federal securities laws and rules that regulate acquisitions of listed US companies also apply to acquisitions of US-listed FPIs. In some cases, however, acquisitions of US-listed FPIs are either exempt from such securities laws and rules or are governed by rules dealing specifically with FPIs.

2. General Legal Framework

2.1 Securities and corporate regulation

The acquisition of a public company (i.e., a company with securities listed on a US securities exchange) requires compliance with certain United States federal laws and state laws. While this chapter addresses both friendly acquisitions and hostile bids, the primary focus is on friendly (non-hostile) transactions. Whatever the acquirer's disposition, friendly or hostile, the legal and regulatory framework discussed below generally applies equally.

- *Federal securities laws* – US federal securities laws generally govern the information to be provided to a target public company's shareholders and mandate procedures that must be followed in an acquisition transaction. The specific securities laws applicable to the transaction will depend on the structure of the transaction, the place of organization of the target public company, and the nature of the transaction consideration. The laws applicable to any given acquisition transaction may include:
    - *SEC proxy rules* – In the most commonly used public company acquisition transaction form, the "one-step" merger, there must be a vote or consent of the target public company's shareholders to authorize the transaction. In these cases, the target public company will need to solicit such approval by means of a formal proxy solicitation (unless approval by written consent is obtained from a sufficient number of target public company shareholders, in which case non-consenting shareholders must nonetheless receive an information statement containing comparable content and explaining the consented-to action. These cases are rare). When directed to the shareholders of US domestic companies or non-FPI US-listed companies, these solicitations are governed by the Securities and Exchange Commission ("**SEC**") proxy rules, which include Section 14 of the United States Securities and Exchange Act of 1934 (the "**Exchange Act**") and Regulations 14A (for proxy solicitations) and 14C (for informational notices) issued under the Exchange Act. These proxy rules prescribe extensive disclosure requirements for proxy solicitations. Solicitation of a shareholder vote will also be required for other types of significant corporate transactions, including asset sales followed by dissolution of the target public company and distribution of the consideration to the target public company's shareholders and by whether, and the extent to which, an acquirer offers its own securities as consideration in the transaction, as in particular a US domestic public company acquirer may be required to solicit the vote of its own shareholders to permit issuance of such securities consideration.
    - *SEC tender offer rules* – In the second-most commonly used public company acquisition transaction form, the "two-step" merger, a tender offer is directed to the target public company shareholders in the first step and a back-end statutory merger in the second. Section 14(d) of the Exchange Act and Regulations 14D and 14E issued under the Exchange Act regulate (i) the information to be provided to target public company shareholders in the first step tender offer at both the preliminary communication and announcement stage before offer commencement, and in connection with the actual offer, and (ii) the procedure for conducting a tender offer. While a two-step merger is effected through a friendly transaction, if an acquirer is proceeding with a hostile transaction, such transaction would be effected by potentially utilizing, among other things, a tender offer, in which case the set of laws and regulations would apply. If a tender offer directed to the target public

company shareholders includes an acquirer's securities as all or part of the offered consideration for the public company acquisition transaction, such tender offer (commonly referred to as an 'exchange offer') and the tender offer rules generally equally apply. A summary of the principal procedural rules for conducting a tender offer of a US domestic public company is set forth in "4. Effecting a Takeover" below.

- *SEC going private rules* – Transactions by a public company or between a public company and an affiliate (which is generally defined as a controlling person of a public company, a person under common control with a public company or a person controlled by the public company and which typically includes the public company's senior management or significant public company shareholders) with a reasonable likelihood or purpose of causing the public company's securities to be delisted, to cease to be registered under the Exchange Act, or to cease being subject to periodic reporting requirements under the Exchange Act, are referred to as "going private" or "Rule 13e-3" transactions. Going private transactions are subject to enhanced disclosure requirements because, among other reasons, they have the potential for abuse or coercive treatment of public company shareholders by insiders who are likely to have access to non-public information, and such transactions may involve the elimination of public ownership at propitious times by management or controlling shareholders of the public company (See "8. Delisting"). Such going private transactions may also attract more attention from shareholder plaintiffs and present a heightened risk of shareholder litigation.

- *SEC rules governing public offerings of securities* – In the case of an acquisition transaction where the acquirer wishes to use its own securities as transaction consideration, SEC Rule 145 under the United States Securities Act of 1933 ("**Securities Act**") applies. Under this Rule, the act of submitting to a target public company's shareholders for a vote on a plan or agreement contemplating a merger, consolidation, transfer of assets or certain other transactions, where the consideration includes securities of another person that would be issued or distributed to the target public company's shareholders, constitutes an offer or sale of a security under the Securities Act. As a result, the securities offered in such transactions (as well as securities offered by an acquirer in an exchange offer made directly to a target public company's shareholders), must be registered under the Securities Act unless an exemption from such registration is available for the transaction. Generally, under applicable SEC rules, the same document that solicits the votes or other action of the target public company shareholders in such transactions, i.e., the target public company's proxy statement for a merger or consolidation (or the offer to exchange distributed by the acquirer to target public company's shareholders in the case of an exchange offer) also serves as the prospectus for the acquirer's shares to be issued as the transaction consideration. A detailed discussion of Securities Act registration requirements is beyond the scope of this chapter.

- *SEC beneficial ownership disclosure rules* – Section 13(d) of the Exchange Act and Regulations 13D and 13G issued under the Exchange Act require disclosure upon acquisition of "beneficial ownership" of more than 5% of the voting equity securities of a company listed on a US stock exchange (a public company) or registered under the Exchange Act. The current disclosure requirements under Section 13(d) and Regulations 13D and 13G are discussed in greater detail in "3. Before a Public Takeover Bid" below.

In addition, Section 16 of the Exchange Act, and the SEC rules promulgated thereunder, provide for reporting requirements and "short-swing" profit disgorgement for beneficial owners of more than 10% of the outstanding voting securities of a public company and its officers and directors.

- *State entity laws* – Legal entities organized within the US exist as creations of the individual state laws for the state where they are formed and are governed in their basic legal operation by the applicable entity laws of that particular state, with Delaware being the most common and US federal law generally not providing a nationalized corporate or other entity law dictating basic entity elements such as governance mechanics. Exceptions notwithstanding, many of the entity laws, and in particular the corporate laws, of the fifty states are similar in their basic mechanisms for mergers and acquisitions, and all fifty states permit the use of statutory mergers (although the specific requirements, procedures and approval thresholds may vary by state), which is the prevailing method for either directly consummating an acquisition or, in the case of a tender offer, squeezing out minority non-tendering public company shareholders in a "two-step" merger. State entity laws and judicial decisions under those laws govern:
    - procedural matters, e.g., notice, timing and voting requirements, for seeking shareholder approval under the state merger statute or in effecting an asset sale or a dissolution of a seller following an asset sale;
    - minority shareholder squeeze-outs;
    - in all-cash acquisitions and certain other acquisitions, the rights of shareholders who do not vote in favor of a merger to receive the judicially determined value of their shares in lieu of the merger consideration, and the procedures for doing so (generally referred to as 'dissenters' rights' or 'appraisal rights'); and
    - the duties of members of the board of directors of the target company in the context of a merger or other business combination. These duties are discussed further in "4. Effecting a Takeover – Fiduciary duties of directors" below.

2.2 Other regulatory requirements - Hart-Scott-Rodino

Apart from industry-specific requirements and restrictions noted in 2.3 below, parties planning an acquisition should be aware that regulatory issues could arise under the Hart Scott-Rodino Antitrust Improvements Act of 1976 ("**HSR Act**").

Under the HSR Act, prior to consummation of an acquisition of voting securities of a public company exceeding certain size thresholds, including open market purchases of securities in advance of an acquisition transaction, US antitrust authorities – the Department of Justice ("**DOJ**") and the Federal Trade Commission ("**FTC**") – must be notified, and details of the transaction and the parties must be disclosed in an HSR filing. As of 2025, the current minimum transaction size which may trigger an HSR filing requirement is US$126.4 million. For transactions above US$126.4 million and up to US$505.8 million there is also a size-of-the parties test. For transactions above US$505.8 million, there is no size-of-the-parties test. The size of the parties and transaction thresholds are adjusted annually. In most cases, if a filing is required, the parties may not close the transaction until the expiration or termination of a 30 calendar day waiting period. However, for certain transactions—

including all-cash tender offers—the applicable waiting period is 15 calendar days. In addition, where an acquirer wishes to use its own securities as consideration paid to the target public company shareholders, receipt of those securities may result in additional HSR filing obligations if applicable thresholds are met.

The FTC recently issued new rules regarding the scope of information and documents that need to be provided in connection with an HSR filing. The FTC estimates that the changes to the HSR notification process will add an average of 68 hours to preparation time for an HSR filing (with an estimated range of between 10 to 121 additional hours of preparation time depending on the complexity of the filing). This average and range likely underestimate the time that will be required for more complicated filings. The final rule introduces several detailed requests for information and documents, contributing to this significantly increased burden.

2.3 Regulation of Foreign Investment - CFIUS

Under the Defense Production Act of 1950, as most recently amended by the Foreign Investment Risk Review Act of 2018 (FIRRMA), the President of the United States has broad authority to block or require divestiture of foreign investments where they find there is a threat to national security. The President is assisted by the Committee on Foreign Investment in the United States (CFIUS or the Committee), an inter-agency committee including economic and security agencies, in the administration of their authority. CFIUS regulations implementing FIRRMA became effective on February 13, 2020.

While the fundamental powers of the President have remain unchanged for decades, recent legislation and regulation have expanded CFIUS' jurisdiction and created a two track system with pre-closing filings being mandatory for certain foreign investments, and voluntary for others. The incentive for making a voluntary CFIUS filing is legal certainty: if CFIUS clears a transaction, neither the Committee nor the President can subsequently challenge it.

Pre-closing filings are mandatory for two classes of transactions:

- *Substantial government interest* – Transactions where a foreign person in which a foreign government has a 49% or more voting interest acquires 25% or more of the voting interest in a US critical technology, critical infrastructure or sensitive personal data business.
- *Critical technology* – Transactions where a foreign person acquires certain governance or information rights in a business that develops, tests or produces a critical technology for use in a listed sector.

Mandatory filings can be made through a short form "declaration" or a longer "notice." A mandatory declaration must be filed 30 days before closing, and possible outcomes include clearance, no-action (effectively a clearance) and a requirement to file a notice, which entails a longer administrative process. Possible outcomes from a notice are clearance, clearance subject to conditions or opposition, with the formal process taking typically 45 to 90 days. Failure to make a required filing can result in penalties up to the value of the transaction.

Where CFIUS has jurisdiction and filing is not mandatory, the parties may file either a voluntary declaration or a notice. The statute provides broad discretion to the President and CFIUS, and there is little opportunity for judicial review. "National security" is not defined, and CFIUS has interpreted the term broadly. CFIUS has particular interest in transactions involving US companies (1) having sensitive government contracts, (2) operating critical infrastructure, (3) producing sensitive technologies, (4) having operations or real estate proximate to sensitive US government facilities, and, more recently, (5) possessing or handling sensitive personal data of US citizens. On the investor-side, CFIUS focuses in particular on investors from jurisdictions that are strategic competitors of the

United States, and investors that have other attributes that give rise to security concerns, e.g., export control or sanctions compliance issues. There are certain exceptions available for investors from allied countries, such as Australia, Canada, New Zealand, and the United Kingdom.

Finally, a filing fee is required for a notice (but not a declaration) filed with CFIUS. The filing fee amount is determined by the value of the transaction, based on the tiers set out below:

Transaction Value	Fee Amount
US$0 to US$499,999.99	US$0
US$500,000 to US$4,999,999.99	US$750
US$5,000,000 to US$49,999,999.99	US$7,500
US$50,000,000 to US$249,999,999.99	US$75,000
US$250,000,000 to US$749,999,999.99	US$150,000
US$750,000,000 +	US$300,000

2.4 Regulation of Outbound Investment - CFIUS

On August 9, 2023, President Biden issued Executive Order 14105 to address a US national security concern posed by certain countries that seek to develop and exploit sensitive or advanced technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities. Effective January 2, 2025, the US government prohibits or requires notification of certain types of outbound investments by United States persons into certain entities located in or subject to the jurisdiction of China, Hong Kong, or Macau, and certain other entities owned by persons from China, Hong Kong, or Macau, involved in specific categories of advanced technologies and products.

Covered transactions include acquisitions of equity and contingent equity interests, conversions of contingent equity interests into equity interests, debt financing transactions, greenfield and brownfield investments, joint ventures, and acquisitions of a limited partner (LP) interest in non-US person funds investing in China, Hong Kong, or Macau.

Covered activities include three categories of national security technologies and products: (1) semiconductors and microelectronics, (2) quantum information technologies, and (3) artificial intelligence. There are both prohibited and notifiable activities related to these categories of technologies and products. Violations may result in civil fines up to twice the value of the transaction or US$368,136 and/or criminal fines of up to US$1 million and imprisonment for up to 20 years.

3. Before a Public Takeover Bid

3.1 Obligations arising at certain ownership levels

Neither United States federal securities laws nor, with certain exceptions, state corporate laws impose acquisition-related obligations on minority shareholders as a consequence of reaching or exceeding any specified percentage of ownership in a public company (such as requiring that they either make a bid for shares held by other shareholders, or offer their shares to other shareholders, as is required in many non-US jurisdictions). Similarly, neither US federal nor state corporate laws provide specific rights to shareholders "automatically" upon obtaining a specific percentage of ownership in a company, other than the right to use the voting power accompanying that percentage interest in accordance with the company's corporate documents and applicable law (such as the right to appoint one or more directors). Such rights may be provided by contract or granted to one or more classes of securities in a company's corporate documents. However, certain disclosure obligations and other consequences arise for acquirers of public company securities (including possible limitations on such acquirer's rights as a shareholder), and for the public company whose securities are acquired, when certain shareholding ownership levels are achieved. These obligations and consequences are summarized in the table below.

For the purposes of the following table, under the SEC rules: (i) "beneficial ownership" means possession of the right to vote or to direct the vote, or the right to dispose or direct the disposition of, a security; and (ii) a person is the "beneficial owner" of a security if the person has the ability to acquire beneficial ownership within 60 days of the determination date by converting a convertible security, exercising an option, warrant, or other right to purchase or subscribe for a security, or by terminating a trust or similar arrangement. In addition, when two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a public company that issued the equity securities, the group that they form is deemed to acquire beneficial ownership of all equity securities of that public company beneficially owned by the group members. Some state "interested shareholder" or similar statutes mentioned in the table may provide a broader definition of "beneficial ownership" than the SEC rules.

Summary table of US percentage ownership consequences for acquirers and target public companies.

Acquisition Threshold or Ownership (%)	Applicable Regulatory or Other Legal Requirement	Brief Summary of Consequences
>5% beneficial ownership	• Exchange Act Section 13(d); Regulations 13D and 13G; Schedule 13D or 13G filing • Target public company reporting obligations	• Acquiring greater than 5% beneficial ownership of a public company's voting securities must be reported by the acquirer of such securities to the SEC on Schedule 13D. Institutional and other passive investors not seeking to control or influence the public company may file a "short-form" Schedule 13G (generally up to a 20% level of ownership). These filings are publicly available. • Public companies must disclose in certain of their public filings the ownership interests of certain transactions with, and certain other information regarding, persons holding more than 5% of their outstanding voting securities.

Acquisition Threshold or Ownership (%)	Applicable Regulatory or Other Legal Requirement	Brief Summary of Consequences
Tender offer for >5% beneficial ownership	• Exchange Act Section 14(d); Regulations 14D and 14E; Schedule TO • Target public company shareholder communication obligations – Schedule 14D-9	• A tender offer conducted by a party who will acquire beneficial ownership of more than 5% of a target public company's voting securities after completion of the tender offer (successful completion of the tender offer is assumed) must be conducted in accordance with the SEC tender offer rules. • Tender offer rules require a target public company to recommend that its shareholders accept, reject or take other action regarding the tender offer, or state that the target public company is unable to make or makes no recommendation, and provide the reasons for its position. • Section 13(d) reporting requirements remain applicable during a tender offer. Filings can be combined under cover of a single Schedule TO.
>10% beneficial ownership	• Exchange Act Section 16(a) and (b); Forms 3 and 4	• Acquiring greater than 10% beneficial ownership of a public company's voting securities must be reported on Form 3. Changes in such ownership must be reported on Form 4. Such filings are publicly available. 10% beneficial owners are subject to forfeiture of profits on purchases and sales, or sales and purchases, of the public company's shares within any six-month period (so-called "short-swing" profit forfeiture rules). • Substantially the same reporting requirements and "short-swing" profit forfeiture

Acquisition Threshold or Ownership (%)	**Applicable Regulatory or Other Legal Requirement**	**Brief Summary of Consequences**
		rules generally apply to directors and executive officers (so-called 'insiders') of public companies. - Public companies must disclose failures to make such required filings in their proxy materials for annual meetings.
10% of target public company's voting shares	- Potential affiliate status under federal securities law principles	- Public sales of securities by "affiliates" may be made only pursuant to a registration statement under the Securities Act or an applicable exemption from registration. - Cashing out minority shareholders in a business combination with an affiliate may be subject to the SEC "going private" rule. - A control person may be subject to certain additional potential liabilities under US federal securities law.
10%-15% of target public company's voting shares	- State "interested shareholder" and other anti- takeover statutes	- These statutes "freeze" and otherwise limit or condition business combinations, e.g., mergers, between the target public company and an "interested shareholder", i.e., a beneficial owner of a specified percentage (generally 10% to 15% or more), of a target public company's voting securities who acquired such ownership without the target public company's consent. Other state anti-takeover statutes focus on voting rights, pricing and constituencies, in addition to shareholders that may be affected by a takeover.

Acquisition Threshold or Ownership (%)	Applicable Regulatory or Other Legal Requirement	Brief Summary of Consequences
10%-20% of target public company's voting shares	• Level of ownership at which shareholder rights, i.e., poison pill, plans are typically triggered (but see the discussion in 3.5, "Investor Rights and Restrictions").	• Shareholder rights plans, (poison pills) are established by certain target public companies under state law and deter hostile (unfriendly) takeovers by making them impossibly expensive or impracticable by means of provisions that, if triggered, would drastically dilute the hostile party's ownership. (Note that in some cases, public companies have poison pills that trigger at about the 5% level. These are typically "Net Operating Loss (NOL) poison pills," which are used by public companies to discourage acquisitions that could jeopardize the public company's NOLs under Section 382 of the Internal Revenue Code.)
50%+ of the target public company's voting shares	• Level of ownership at which a shareholder controls most or all decisions (including elections to the board of directors) • Target public company reporting of the change of control is required (but can be required at a lower percentage if that lower percentage affords control) • Threshold dependent on terms of the public company's certificate of incorporation and bylaws or the public company's comparable organizational documents	• Most (but not all) fundamental decisions of US companies are decided by a vote of shareholders holding a majority of either the voting shares present (in person or by proxy) at a meeting and voting or by a majority of the outstanding voting shares. • As a practical matter, de facto control is often achieved at lower thresholds. • A target public company that has undergone a change of control must file a current report on Form 8-K with the SEC disclosing the change of control. • Exchange Act Section 14(f) and SEC Rule 14f-1 require the filing and distribution to

Acquisition Threshold or Ownership (%)	Applicable Regulatory or Other Legal Requirement	Brief Summary of Consequences
		target public company shareholders of certain information if a majority of the board is selected by an acquiring party without a shareholders' meeting.
Majority of shares (or whatever applicable threshold required under a public company's organizational documents) entitled to vote on a merger	• Section 251(h) of the Delaware General Corporation Law	• In most situations, an acquirer holding this threshold will be able to hold a shareholder meeting to approve a statutory merger to "squeeze out" minority shareholders (subject to fiduciary duties and appraisal rights and the go-private regulations described above). • Under Delaware law, subject to satisfying the requirements of Section 251(h) of the Delaware General Corporation Law, a merger agreement between an acquirer and a target public company can provide that if the acquirer conducts a tender offer and, after completion of the tender offer, holds a majority of the target public company's outstanding shares entitled to vote on a merger (or any higher percentage required for such action by the target public company's charter), the acquirer or an acquisition subsidiary may complete the merger of the target public company into or with the acquirer without a target public company shareholder vote. This statute allows for a more streamlined tender offer/squeeze-out merger process.
90%+ of shares entitled to vote on a merger	• Level of ownership at which a target company may be merged into an acquiring company on a "short-form"	• Under the laws of Delaware and many other states, an acquirer may merge a target company into itself or its

Acquisition Threshold or Ownership (%)	Applicable Regulatory or Other Legal Requirement	Brief Summary of Consequences
	basis, e.g., under Delaware General Corporation Law Section 253	subsidiary without a target company shareholder vote if the acquirer holds 90% or more of the voting securities of the target company (usually achieved through a tender offer) (subject to fiduciary duties and appraisal rights and the go-private regulations described above).

3.2 Disclosure of beneficial ownership of shares

A party that makes an "acquisition" that results in the party becoming the beneficial owner of more than 5% of a class of a public company's voting securities must report its beneficial ownership on either a Schedule 13D or, if the investor meets certain criteria and disclaims intent to control or influence the public company, Schedule 13G. Schedule 13G is a simplified filing and generally will trigger less of a market reaction – as it is a lower signal of future control intent – however, it is not available once the investor crosses 20% ownership. These forms report the identity and intentions of the acquirer and can be due as quickly as five business days after the acquisition initially triggering the need for a Schedule 13D (or, with respect to an amendment to an existing Schedule 13D, two business days after a material change to existing disclosure).

3.3 Insider trading and anti-manipulation rules

General – Several provisions of the US federal securities laws operate to prohibit the purchase or sale of shares of a public company while an insider is in possession of material, non-public information and to provide civil and criminal remedies for breaches of these laws. An "insider" generally includes officers and directors of a target public company and may, depending on the circumstances, include an owner of more than 5% of the target public company's shares. An insider or other person in possession of such information must either disclose the information before making a sale or purchase of the target public company's shares, or refrain from trading in the shares. In addition, under certain circumstances, disclosure by an insider to a person who trades on the basis of the information can result in "tipper/tippee" liability. "Materiality" of information depends on the facts and circumstances but, generally, information is material if it would be important to an investor in making a decision to buy or sell a security.

Importantly, a bidder's knowledge of its own intent to seek control of a target public company through the acquisition of shares is not itself restrictive of that bidder's ability to acquire shares of such target public company under US insider trading laws – in other words, US insider trading law would not prohibit a potential bidder from buying shares of a public company in the open market solely on the basis of such bidder's knowledge of its own intent. However, this information can be considered material non-public information if shared, giving rise to liability if acted upon improperly (for example, could result in "tipper" liability for the bidder if another party trades on the basis of the information).

FINRA – In addition, as part of its market surveillance function, the Financial Industry Regulatory Authority ("**FINRA**"), will routinely examine trading in the shares of a target public company prior to and immediately following announcement of an acquisition or other significant event, and may conduct a formal or information investigation if it detects unusual activity suggesting improper use of confidential information by parties with access to that information.

4. Effecting a Takeover

The two principal methods of acquiring 100% ownership of a target public company described above are (i) the "one-step" statutory merger, which is submitted for approval by the target public company's (and, in certain circumstances, the acquirer's) board to the target public company's (and, in certain circumstances, the acquirer's) shareholders pursuant to a proxy solicitation in accordance with the SEC's proxy rules (i.e., Section 14 of the Exchange Act and Regulations 14A and 14C issued under the Exchange Act), and (ii) the "two-step" merger, that in the first step requires consummation of a tender offer to the shareholders of the target public company under SEC rules, immediately followed by a second-step "short-form" statutory merger to squeeze out non-tendering shareholders of the target public company.

In either structure, in a friendly context, the parties would negotiate a merger agreement which would set forth (i) the price, (ii) the process for and covenants in respect of conducting either the shareholder vote or the tender offer, (iii) the process for and covenants in respect of making applicable SEC filings, (iv) in the case of a tender offer, the process for effecting the squeeze-out of non-tendering shareholders, (v) certain representations and warranties, (vi) certain interim operating covenants, (vii) procedures for dealing with interloping bidders, (viii) procedures for regulatory approvals, and (ix) termination rights and fees. See "6.1 Tender offer procedures" for additional discussion on the procedures applicable to effecting a tender offer, and "7.1 Squeeze-out procedures" for additional discussion on the procedures applicable to effecting the second step squeeze out non-tendering shareholders of the target public company, including if a tender offer fails to result in sufficient tenders of target public company shares to consummate a second-step "short-form" statutory merger.

4.1 Preliminary matters

(a) *No takeover code* – There is no general takeover code under US federal or state law.

  (i) For "one-step" statutory mergers, proxy and consent solicitations in US public companies are governed by the SEC's proxy rules, which prescribe extensive disclosure requirements for such solicitations.

  (ii) For "two-step" mergers, Section 14(d) of the Exchange Act and SEC Regulations 14D and 14E regulate both the information to be provided to target public company shareholders in a tender offer and the procedure for conducting a tender offer.

  (iii) For either transaction structure, state corporate laws specify various procedural matters, e.g., notice, timing and voting requirements, to be followed in acquiring a company pursuant to the state merger statute, and completing a tender offer via a statutory merger to squeeze out non-tendering shareholders. Such state corporate laws will also determine whether shareholders may seek an appraisal of their shares in lieu of accepting the merger consideration, and the procedures to follow to do so. Judicial decisions may impose additional requirements, particularly in the case of business combination transactions with controlling persons of the target.

(b) *No mandatory offers; no minimum pricing* – Unlike the takeover rules in certain non-US jurisdictions, neither US federal securities laws nor state corporate laws require an acquirer to commence a tender offer as described herein for the shares of a public company as a consequence of acquiring a specified percentage of the company's outstanding shares; however, at least three states impose quasi-analogous purchase obligations on public company acquirers (Maine, Pennsylvania and South Dakota have "control share cash-out" requirements under which a bidder that acquires a specified percentage of voting power must notify remaining shareholders, who can then require that the bidder purchase their shares). Similarly, although some US states impose "fair price requirements", e.g., highest price paid during a specified "look-back" period, on the consideration in business combinations with holders of more than a specified percentage of the target company's outstanding shares, US federal securities laws do not generally impose any minimum price at which a tender offer is to be conducted or minimum amount of merger consideration that must be paid, subject to limited exceptions for squeeze-outs. Certain rules applicable to changes in the consideration payable in a tender offer, and the consideration payable in squeeze-outs, are discussed below.

4.2 Making the bid public

(a) *Preliminary discussions* – There are no specific US federal regulations around preliminary business discussions, and it is common practice for such preliminary business conversations around an acquisition to be kept confidential (with the exception of certain situations such as hostile approaches, management take-privates and publicly announced "strategic review" processes). In friendly transactions, the parties generally enter into a confidentiality agreement to permit the acquirer to conduct due diligence of the public company target. This agreement typically restricts public announcements about the negotiations and enables the target public company to provide material non-public information to the acquirer without violating SEC Regulation FD, which restricts selective disclosure of such information. It is typical in the US for parties to negotiate definitive agreements in parallel with due diligence. Because negotiations and due diligence are conducted pursuant to an agreement that requires confidentiality and restricts public announcements, acquisitions in the US generally become public only upon the signing of a definitive agreement. This may be contrasted with the practice in other jurisdictions where such announcements are made earlier, particularly if the acquirer builds up its holdings in a target public company to a level that obligates it to offer to purchase publicly held shares. If the target public company is unwilling to proceed with negotiating a 'friendly' transaction, then the acquirer may consider whether to proceed on a 'hostile' basis, which generally means that the acquirer will make public its intentions regarding an acquisition of the target public company.

Even at this preliminary stage, a potential acquirer will need to keep a record of its contacts and discussions with the target public company. If the parties reach agreement for an acquisition of the target public company, the disclosure document prepared for the target public company's shareholders – a definitive proxy statement for a long-form merger or an offer to purchase for a tender offer – will include a detailed discussion of past contacts, transactions or negotiations between the target public company (and its affiliates) and the acquirer or their respective representatives, generally including the nature of the contact, e.g., a meeting, letter, or telephone conversation, the principal participants and the substance of the contact. This disclosure is usually presented in the target public company's proxy statement or the acquirer's offer to purchase the target public company's shares under an appropriate heading, such as "Background of the Merger."

As noted above, a party filing a Schedule 13D is obligated to disclose its "plans and proposals" regarding the target public company, and to amend its Schedule 13D for "material changes" in the information in the Schedule. If a potential acquirer has a stake in the target public company that has been disclosed in a Schedule 13D, execution of a confidentiality agreement and the conduct of due diligence entails a significant risk that the parties' discussions – even at this preliminary stage – must be disclosed as such a material change, particularly if the acquirer's initial filing stated simply that it acquired its stake "for investment," without any reference to seeking a possible business combination or other transaction with the target public company.

(b) *Agreement Execution* – Upon executing a definitive agreement for either a "one-step" merger or a "two-step" merger, the acquirer and target public company will typically issue a joint press release and file it with the SEC. The release will generally identify the parties involved and summarize the material terms of the acquisition transaction.

(c) *"One-step" merger and pre-solicitation announcement* – In a friendly "one-step" merger, before the target public company (and, in certain circumstances, the acquirer) begin formally soliciting proxies from target public company shareholders, they may communicate orally and in writing with target public company shareholders and other stakeholders, e.g., employees, customers and suppliers, and the market regarding the transaction. Under SEC Rule 165 under the Securities Act and Rule 14a-12 under the Exchange Act, all such public written communications commencing with, and including the first public announcement of the transaction, must be filed with the SEC on or before the day of first use. Pursuant to Rule 14a-12 under the Exchange Act, each communication must identify the participants in the proxy solicitation and describe their direct or indirect interests in the solicitation or advise shareholders where to obtain the information. Before distribution of the definitive proxy statement for the transaction, such "pre-solicitation announcements" may not include a form of proxy and, like pre-commencement tender offer announcements, they must advise shareholders on where to obtain the definitive proxy statement and to read it when it is available. As with exchange offers, where the merger consideration will consist in whole or in part of securities, such announcements constitute "offers" of such securities; however, SEC Rule 165 under the Securities Act permits such offers prior to the filing of a registration statement for the offering, subject to that rule's filing requirements and information limitations.

(d) *"Two-step" merger and tender offer commencement* – In a friendly "two-step" merger, the parties will execute a merger agreement that, among other things, obligates the acquirer to commence the first-step tender offer under applicable SEC rules, setting forth the agreed conditions to that offer and the consummation of the second-step merger squeezing out minority non-tendering shareholders.

Under the SEC tender offer rules, a tender offer is commenced when the acquirer first publishes, sends or gives the means to tender securities to the target public company's shareholders. On the commencement date, the acquirer must file a Schedule TO with the SEC together with the required exhibits (which will include the offer to purchase, a letter of transmittal and other documents required to deliver tendered shares, and the acquirer's press release announcing commencement of the offer). The acquirer must deliver a copy of Schedule TO to the target public company, notify the exchange on which the target public company's shares are listed of the commencement of the offer, publish an advertisement (which may be in summary form) in one or more major newspapers containing specified information regarding the offer, and disseminate the tender offer materials to the target public company's shareholders.

- *Pre-offer announcements – Generally* – Announcements prior to formal commencement of a tender offer, e.g., an announcement that a bidder is considering or has determined to make a tender offer, or is in discussions with the target public company regarding a possible bid, are permitted. Such announcements do not constitute "commencement" of the offer if they are filed with the SEC under cover of Schedule TO on or before the date of first use and designated as pre-commencement communications. Such communications may not include the means to tender shares and must contain cautionary language advising target public company shareholders where to obtain the tender offer statement and to read it when it is available. These requirements also apply to a joint press release issued by an acquirer and a target public company announcing their execution of a merger agreement prior to commencement of a tender offer for the target public company's shares pursuant to the merger agreement.

- *Pre-offer announcements – Exchange offers* – In exchange offers (tender offers in which the consideration will consist in whole or in part of securities of the acquirer), such announcements constitute "offers" of such securities. Ordinarily, securities may not be offered publicly unless a registration statement relating to the offered securities has been filed under the Securities Act. However, SEC Rule 165 under the Securities Act permits such announcements prior to the filing of a registration statement for the securities to be offered in an exchange offer, provided that the announcements are filed with the SEC and comply with informational limits limitations on such pre-offer announcements.

4.3 Form of consideration and pricing rules

(a) *Form* – Neither US federal securities laws nor state corporate laws prescribe the form of consideration to be paid in a tender offer or merger with a target public company or its shareholders. Apart from the acquirer's own financial resources and access to financing, factors that will influence an acquirer's choice of consideration to be offered include the following:

- *Tax deferral* – If a significant part of the consideration payable to target public company shareholders in an acquisition transaction consists of equity securities of the acquirer, and the transaction otherwise satisfies the US tax law requirements for a "reorganization", target public company shareholders will not recognize gain or loss on the exchange of target public company shares for acquirer shares; rather, any tax on acquirer shares received as consideration will be deferred until the target public company shareholders sell the acquirer shares. The transaction is immediately taxable to target public company shareholders to the extent they receive "boot", i.e., non-qualifying consideration, such as cash or debt securities of the acquirer.

- *Securities Act registration; timing and availability of information* – Securities to be issued as tender/exchange offer or merger consideration to public company shareholders must be registered under the Securities Act (unless an exemption is available). Using acquirer-issued securities as consideration is a practice typically reserved for acquirers that already have publicly listed shares in the US, as the process registering acquirer shares with the SEC for use in an acquisition transaction is usually incompatible with the timing constraints of most M&A deals (with the exception of back-door IPOs such as reverse mergers and SPACs). Preparation of a registration statement is a complex process, and the issuer of the to-be-registered shares and certain other parties are subject to strict liability for material misstatements in and omissions from the prospectus.

- *Acquirer shareholder approval requirements* – Exchange listing rules may apply to the acquisition of a significant minority interest in a public company from the company, or to the issuance of listed public company shares as acquisition consideration. Stock exchanges require that public companies list all outstanding shares of their publicly listed class(es) of securities, as well as shares of such class(es) issuable upon conversion of convertible securities, exercise of options, warrants and other subscription rights, etc. As a condition to publicly-listing their securities, both the NYSE and Nasdaq require their public companies to obtain shareholder approval before issuing common shares that represent (or before issuing securities convertible into, or exchangeable or exercisable for, common shares that, when converted, exchanged or exercised will represent) 20% or more of the voting power of the listed public company (measured before giving effect to such issuance and subject to certain exceptions), as well as for the issuance of shares in certain acquisitions from related parties and in transactions that would result in a change of control of the public company, regardless of whether state corporate law requires approval by an acquirer's shareholders. Such requirements are not applicable to acquisitions for cash.

- *Hostile vs. friendly bids* – Extensive information regarding the acquirer is required to be included in a registration statement for shares of an acquirer to be issued as tender/exchange offer or merger consideration. Depending on the materiality of the target public company to the acquirer, that information could include the acquirer's historical financial statements and pro forma combined financial statements that give effect to the business combination. Such information, including in particular the target's financial information required for producing pro forma financial statements, is likely to be impractical or even impossible to obtain in a hostile acquisition, making the issuance of shares in a registered offering impracticable in such situations.

- *Timing generally* – An acquirer in an all-cash transaction will often have a timing advantage over a rival bidder offering its securities, due to the certainty of value and the timing for registering its shares. This can be especially important when the board of the target in a hostile bid determines that an all-cash acquisition of the target by a "white knight" is preferable to the hostile bidder (subject to compliance with the directors' fiduciary duties, see "4.7 Fiduciary Duties of Directors," below).

- *Acquirer financial statements* – Under certain conditions, an acquirer is required to include its financial statements in a tender offer document furnished to target public company shareholders. However, financial statements are not required to be disclosed if the consideration is cash, the tender offer is not subject to a financing condition, and either the acquirer is an Exchange Act reporting company or the offer is for all the outstanding securities of the target public company. The proxy rules provide comparable accommodations for all cash transactions. See "4.5 Financing requirements," below. An acquirer having sufficient cash and/or committed financing and wishing to maintain the confidentiality of its financial statements would offer cash consideration for this reason.

- *Availability of appraisal rights* – Shareholders of a target public company in an all-cash merger situation (including in "second-step" squeeze-out mergers following a "first-step" tender offer) generally have statutory appraisal rights. See "4.8 Appraisal Rights of Minority Shareholders," below. Under Delaware law and many other state corporate laws, appraisal rights are not available in a merger in which the consideration consists of public company shares.

- *CVRs* – Contingent consideration, or the right to receive an additional payment or payments such as earn-outs or milestone payments upon satisfaction of specified conditions set forth in the governing instrument for the payment (often referred to as a contingent value right, or "**CVR**"), is unusual in public company acquisitions (other than in the pharmaceutical and biotech industries, where they are fairly common) for various reasons, including the difficulty of valuing the contingent payment for purposes of assessing the fairness of the consideration offered to target shareholders, and comparing the value of the CVR to the consideration in an all-cash or all-shares transaction. A fully transferable CVR will generally be considered a security requiring Securities Act registration and, if structured as a debt instrument, qualification of an indenture under the US Trust Indenture Act of 1939, as amended. In some cases, such registration and a limited period of required Exchange Act reporting by the entity issuing the CVRs (generally lasting until redemption or payout of the CVRs) are an acceptable trade-off for the ability to include contingent consideration in the transaction. However, in most cases, CVRs, if used, are structured to impose restrictions on transferability and other limitations to obviate the need for Securities Act registration.

(b) *Pricing* – As noted above, neither US federal securities laws nor state corporate laws generally prescribe the amount of the consideration to be paid in a tender offer or merger (other than in second-step squeeze-out mergers after a tender offer, in which both exemption from the SEC's going private rule and the Delaware law provision permitting a squeeze-out with less than 90% ownership of the target company require that the consideration in the squeeze-out be at least equal to the highest consideration paid in the tender offer). However, factors affecting and potentially prescribing certain pricing will include the following:

- *SEC best price / all holders rule* – In a tender offer, SEC Rule 14d-10 requires that a tender offer be open to all holders of the class of a security subject to the offer and that the consideration paid to any holder for a tendered security equals the highest consideration paid to any other holder of security.

- *Price changes* – In a tender offer, SEC Rule 14e-1 requires that upon any increase or decrease in the tender offer consideration, the tender offer must remain open for a minimum of 10 business days following dissemination of notice of the change in consideration.

- *Disclosure and fairness considerations* – In all tender offers and mergers, certain rules may require the acquirer to provide information regarding purchases of the target public company's securities during the preceding 60 days by the acquirer and certain related parties. For example, in the tender offer phase of a "two-step" merger, the acquirer is required to disclose this information in its offer documents. In a "one-step" merger transaction, if the acquirer is required to file Schedule 13D as a result of beneficial ownership of target securities, this information must be disclosed under Item 5 of Schedule 13D. In addition, in going private transactions, the acquirer-affiliate is obligated to provide extensive additional disclosure regarding the proponent's belief as to the fairness of the transaction to unaffiliated shareholders of the target public company and the basis for that belief, among other additional disclosures.

4.4 Conditional and unconditional offers

US federal securities laws governing tender offers and practice do not provide that tender offers become "unconditional" after the passage of a specified interval after commencement or another event. In a non-hostile transaction, the conditions to an acquirer's obligation to accept and pay for tendered shares are generally negotiated between the acquirer and the target public company. In a hostile bid, such conditions are determined by the acquirer. Conditions may be waived by the party whose obligations are subject to satisfaction of the condition.

US federal securities laws do, however, regulate the types of permissible conditions to a tender offer; specifically, under SEC guidance, a tender offer can be subject to conditions only (i) where the conditions are based on objective criteria and (ii) the conditions are not within the bidder's control. If the conditions are not objective and are within the bidder's control (*e.g.,* the offer may be terminated for any reason or may be extended indefinitely), the SEC has taken the view that the offer would be illusory and may constitute a fraudulent, deceptive or manipulative practice under applicable securities laws.

Typical offer conditions to an acquirer's obligation are:

- *Number of shares tendered* – Receipt of tenders of a number shares which, when added to any shares owned by the acquirer, will constitute at least a majority of the target public company's outstanding shares (or, in some cases, the number of shares required for the acquirer to effect a short-form merger).
- *Availability or completion of financing* – Receipt of financing to complete the purchase and payment for the target public company's shares. (Obviously, an acquirer that includes this condition in its offer can be at a serious disadvantage if a competing bid is commenced by an acquirer with available or committed financing.)
- *Receipt of governmental consents* – Receipt of pre-merger clearance (or early termination of the waiting period) under the HSR Act, and receipt of other required governmental consents, permits or approvals, such as CFIUS clearance.
- *Absence of legislative or judicial impediments* – No enactment of any legislation that would prevent or interfere with the transactions or commencement of any judicial or administrative proceedings seeking to prevent consummation of the transaction.
- *Bring-down of target public company covenants* – Receipt of a bring-down certification from the target public company that the target public company has complied with any covenants to which it was subject to under the merger agreement, typically to an "in all material respects" standard.
- *Equity rollover* – In a "public-to-private" acquisition by a private equity firm, the rollover of the equity held by specified shareholders, such as founders and key management members, into the new equity structure of the acquired company. *(A cautionary note - if the rollover negotiations take place too early in the sale process, e.g., before agreement has been reached on price, management may be subjected to claims that they selected the bidder that offered the best terms to management, rather than the best value to all shareholders.)*
- *No material adverse effects* – Absence of any material adverse effects on the business, financial condition or results of operations of the target public company.
- *Effectiveness of registration statement* – Where the consideration consists of or includes shares, effectiveness of a registration statement filed with the SEC to register

such shares, and the absence of any stop order suspending the effectiveness of the registration statement.

- *Elimination of takeover defenses* – Approval of the acquisition by the target public company's board under any applicable "interested shareholder" statutes and waiver or amendment of any "poison pill" to enable the transaction to proceed. The target public company's agreement on these points will be necessary conditions to any hostile bid. In a friendly acquisition, they will generally be provided for in the merger agreement and described to shareholders in the offer to purchase or the definitive proxy statement.
- For "one-step" statutory mergers, similar conditions are typically negotiated and framed as conditions to the closing of the merger.

4.5 Financing requirements

Neither US federal securities laws nor state corporate laws expressly require that an acquirer have financing available or committed at the commencement of a tender offer. However, for tender offers, under SEC Rule 14e-8, it is fraudulent for a person to announce its intention to conduct a tender offer if the person does not have a reasonable belief that it will have the means available to purchase securities to complete the tender offer. Schedule TO requires that an acquirer provide information regarding the source and amount of funds it will use to acquire the target public company. The offer to purchase (or, typically, a definitive proxy statement for a long-form merger, in order to avoid omitting information that might be material to an investor's investment decision) will include a description of the acquirer's financing arrangements, including the terms of the financing documents. The financing agreements will typically be filed as exhibits to the acquirer's Schedule TO. As indicated above, receipt of financing for the acquisition can be a condition to an acquirer's obligation to accept and pay for tendered shares (or, in a long-form merger, to complete the merger). However, the existence of a financing condition will be significant factor considered by the board of a target public company that receives multiple offers, since "deal certainty" is a factor that a board may consider in its evaluation of competing offers. In addition, the SEC rules dispense with the need to provide certain financial information for the acquirer in an all-cash tender offer for all of the outstanding shares of the target public company if the offer is not subject to a financing condition. The proxy rules afford similar relief. They provide that in an all cash acquisition, specified information for the acquiring company, including its financial statements, need not be provided unless the information is material to an informed voting decision, e.g., the security holders of the target public company are voting and financing is not assured. These provisions can be attractive to an acquirer that has not previously published its financial statements and wishes to continue to avoid doing so.

If a financing condition to a tender offer is waived, this will be treated as a material change to the terms of a tender offer that must be disclosed, and the period during which shareholders may tender their shares in the target public company must be extended under SEC Rule 14e-1 under the Exchange Act to permit the target public company shareholders time to evaluate the waiver (the SEC generally expects a minimum extension of 5 business days).

4.6 Recommended and hostile offers

In all tender offers, the target public company must take a formal position (which may include a statement that it makes no recommendation) with respect to the tender offer within 10 business days after the tender offer commences. It does so by including its position in a Schedule 14D-9 disclosure statement filed with the SEC. Prior to the filing of Schedule 14D-9, the target public company may issue statements regarding the offer as long as it files any written communications with the SEC on the date they are issued and includes a clear legend advising its shareholders to read the company's formal recommendation statement when it is available.

In a friendly transaction, whether a "one-step" statutory merger or a "two-step" merger, the content of the target public company's position is usually negotiated in advance and the offer to purchase or target public company's proxy statement will include information regarding the board's consideration and approval of the transaction, its recommendation that target public company shareholders accept the offer and tender their share or vote in favor of the merger, as the case may be, and the reasons for the board's recommendation. In a friendly "two-step" merger, the target public company's Schedule 14D-9 will be prepared in coordination with the acquirer and filed and disseminated at the time the offer commences.

4.7 Fiduciary duties of directors

(a) Duties of directors; standard of conduct

Directors of a company must act in the best interests of the company and its shareholders. They must exercise the degree of care that a reasonable person would employ in similar circumstances and place the interests of the company and its shareholders ahead of any self-interest. In the context of a "change of control transaction", the board is generally required to comply with so-called Revlon duties to act reasonably to seek the transaction that offers the best value reasonably available for the company's shareholders.

In Delaware, courts have stressed the importance of the board being adequately informed when negotiating the sale of control of the company. This generally requires that the target company's board:

- analyze the entire situation and evaluate the consideration being offered for control of the company in a disciplined and well-documented manner;
- receive financial and legal advice, negotiate diligently and ensure that it possesses all relevant material information; and
- use methods or procedures that will enable the board to determine whether the consideration being provided to target company shareholders represents the best value reasonably available to the shareholders.

Some of the suggested methods for the target company's board to accomplish these ends include conducting an auction, conducting an "active" market check of other potential buyers before entering into an agreement, negotiating for inclusion of a "go-shop" clause allowing the target company to solicit interest from potential buyers for a limited period of time after signing a definitive agreement with an initial buyer or, if that is not acceptable to the acquirer, including in the definitive agreement an exception to a "no-shop" clause (a prohibition on the target company's soliciting a purchase proposal from any other party) permitting the target company to terminate the agreement with the acquirer to accept a superior, unsolicited competing offer made by a third party (the so-called 'fiduciary out'), the exercise of which generally requires payment of a break-up fee by the target company to the acquirer. Additionally, as part of informing itself with respect to a potential sale, the target company's board will seek a "fairness opinion" from its investment bankers before approving a change of control transaction. Having accepted these methods, Delaware courts have nonetheless emphasized that there is no single pathway or collection of methods for a board to satisfy its fiduciary duties in this respect, and the board of a Delaware company should choose methods and run processes based on its informed and reasoned assessment of a specific situation in order to maximize shareholder value.

On the acquirer side, for significant acquisitions, particularly where acquirer shares are used as consideration, an acquirer may consider retaining its own investment banker to provide a similar opinion.

(b) Fiduciary Duty Litigation

Directors of a target company defending a shareholder suit attacking a transaction for alleged violation by the directors of their fiduciary duties will seek to have the court apply the business judgment rule to their actions. Under the business judgment rule, directors are presumed to have acted in a well-informed manner, in good faith, and in the best interests of the company. That presumption may be overcome by appropriate evidence that the directors did not act on an informed basis, in good faith, or in the belief that their action was in the best interests of the company and its shareholders. If these presumptions are not rebutted, then the court will apply the business judgment rule and will not substitute its judgment regarding the merits of a transaction for that of the directors unless it cannot be attributed to any rational business purpose.

Recent case law in Delaware has established conditions under which breach of fiduciary duty claims may be "cleansed," thereby significantly enhancing director's ability to prevail in post-closing challenges to transactions that have been approved by the target company's shareholders. Under the *Corwin* line of cases in Delaware, the highly deferential business judgment standard of review applies to a post-closing action seeking damages for directors' breach of fiduciary duties in transactions that do not involve controlling shareholders, so long as the shareholder approval was "fully informed" and "uncoerced." These decisions apply well-established principles relating to proxy disclosure that only "material" information must be disclosed and a narrow view of "coercion." Accordingly, in most cases applying the *Corwin* decision, the business judgment rule has been applied and the cases have been dismissed, although several recent cases denying or reversing *Corwin* dismissals have emphasized an "informed" approval as a prerequisite to a *Corwin* defense. Subsequent cases have shown that Delaware courts will meticulously review corporate disclosures to ascertain whether the shareholders' decision was truly informed, meaning that all material facts were disclosed completely and accurately. Additional challenges by plaintiff shareholders have focused on the involvement of and potential benefits accruing to a controlling shareholder which, if true and without the *ab initio* implementation of other measures, results in the transaction being reviewed not under the lenient business judgment rule but the more stringent standard of entire fairness.

A key driver behind litigation alleging fiduciary breach has been the availability of counsel fees to plaintiff's counsel for benefits ostensibly provided to the target company's shareholders through their representation of the plaintiff class or the derivative plaintiff, and there are law firms that specialize in conducting such litigation. Generally, class actions and derivative actions cannot be settled without approval of the settlement by the court in which the action is brought, and the plaintiff's counsel's application for fees is considered by the court as part of its review of the settlement terms. The Delaware Supreme Court, in the *Trulia* case, questioned whether the value of the claimed "benefits" justifies approval of settlements that provide for broad releases of the claims of the plaintiff class and payment of plaintiff's counsel fees, particularly in cases in which the alleged benefit to target company shareholder involves minimal additional disclosure provided to target company shareholders, rather than a tangible benefit to shareholders. In *Trulia*, the Delaware Supreme Court stated that it would no longer approve "disclosure-only" settlements in which the supplemental disclosures do not address material misrepresentations or omissions.

More recently, Delaware raised the bar for plaintiffs even further, requiring that the supplemental disclosure be "plainly material" for any mootness fee to be awarded. The response to *Trulia* in other jurisdictions has varied.

There has been a significant decline in Delaware-based mergers and acquisitions litigation, with many commentators contributing the decline to the *Corwin* line of cases, clarifications by courts on when injunctive relief is not available, and the heavy scrutiny now being applied to "disclosure only" settlements under *Trulia*. In an apparent response to these obstacles, plaintiff shareholders of target public companies have repurposed many of their claims as violations not of fiduciary duties but of US federal securities laws. If the disclosures by the target public company are materially misleading or omit material information, then the target public company shareholders' actions may be enjoined until the missing information is provided with reasonable time for the target public company shareholders to review it. In practice, however, many claims of defective disclosures are strategic; many plaintiff public company shareholders choose not to file a complaint with a court and instead send letters to the target public company (some attaching draft complaints that are never filed) asserting that the target public company's disclosures are materially misleading. If a target public company issues additional public disclosures addressing these alleged gaps, then the plaintiff target public company shareholders again claim that they created a benefit and/or are entitled to a mootness fee. US federal courts have increasingly criticized the value of such disclosures and any claim for fees by plaintiffs' counsel.

Plaintiff shareholders have pressed other forms of litigation in response to these trends in Delaware and US federal courts. Some prospective plaintiff shareholders have asserted less common causes of action for fraudulent statements or behavior under the laws of US states where individual shareholders reside. Other prospective plaintiff shareholders have demanded access to company books and records under Section 220 of the Delaware General Corporation Law, which provides shareholders with the right to inspect corporate records on demand "for any proper purpose." Access is sought as a means of obtaining information and documents to bolster a complaint -- specifically, to anticipate a *Corwin* defense to the action e.g., by obtaining information relevant to whether the shareholder vote was fully informed, as required by *Corwin*, or whether the shareholder proposing the transaction to be voted on actually exercised control over the company such that a *Corwin* defense would be unavailable. The Delaware court has ordered inspection over defendants' objections in such cases. While the court has interpreted the "proper purpose" standard to require that a shareholder seeking access have only a "credible basis" for its request, there must still be a showing of some facts that, if borne out through investigation, could potentially lead to a cause of action.

4.8 Appraisal rights of minority shareholders

Under virtually all US state corporate laws, once a merger is approved by target company shareholders and completed, the merger is binding on all target company shareholders, regardless of whether they voted in favor of the merger (or had no vote because the merger was effected as a short form merger without shareholder approval). However, under most state corporate laws, target company shareholders in an all-cash merger, whether a one-step or two-step merger, who properly exercise any dissenters' rights available to them under applicable state law (which generally requires that such shareholders vote against or refrain from voting on the merger and, in case of a two-step merger, refrain from tendering into the first step tender offer) or the target company's organizational documents will generally have the right to seek appraisal, i.e., a court determination of the fair value of their shares, and to receive the appraised value of their shares, rather than the merger consideration.

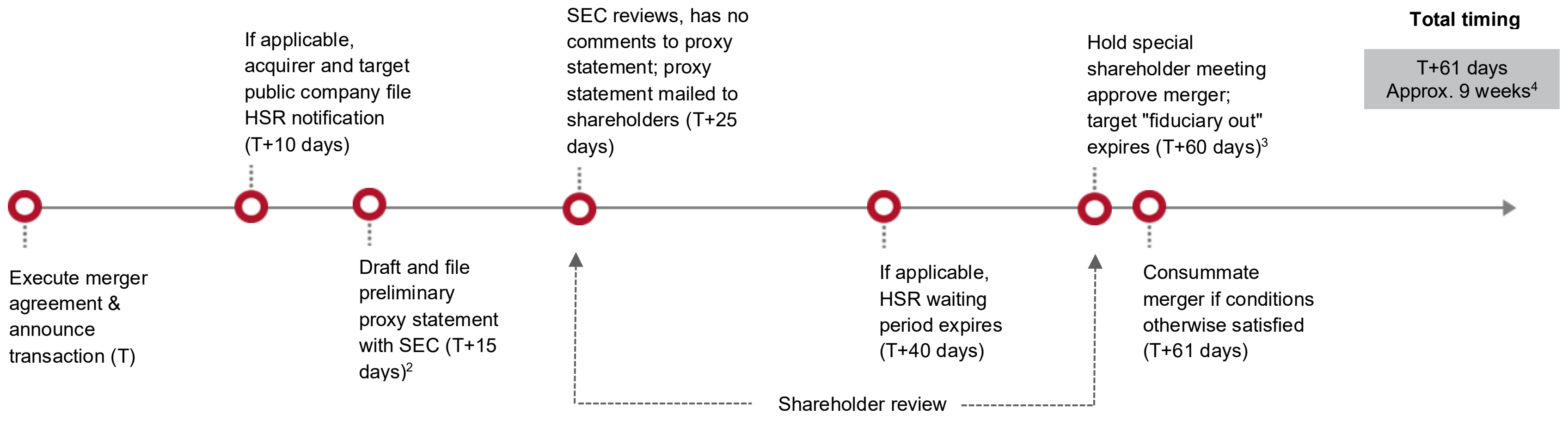
5. Timelines

Set forth below are illustrative alternative timelines for negotiated, "friendly" acquisitions for cash, conducted as a "one- step" merger and a "two-step" merger. The cash "two-step" merger generally has a shorter timeline, regardless of whether it is effected in reliance on Section 251(h) of the Delaware General Corporation Law after acquisition of simple majority ownership (see further discussion on Section 251(h) of the Delaware General Corporation Law in "7.1 Squeeze-out procedures"), or as an "old regime" "two-step" transaction after acquisition of 90% ownership (or such other percentage as may be required for a short-form merger under the applicable state corporate law).

The principal factor increasing the time required for a "one-step" merger is SEC review of, and comment on, the target public company's proxy statement and subsequent revision of the proxy statement or other appropriate responses to the SEC's comments. A tender offer for a "two-step" merger can be commenced without any SEC review of the acquirer's Schedule TO. However, SEC comments may be issued after commencement of the tender offer and could require amendments to the offer to purchase (which, if material, could obligate the acquirer to extend the offer period) or to the target public company's Schedule 14D-9.

For the sake of simplicity, the steps set forth below assume the target public company is incorporated under Delaware law, the prevailing jurisdiction of choice for most US corporations.

One-step, all cash merger (indicative timeline)[1]



Execute merger agreement & announce transaction (T)

If applicable, acquirer and target public company file HSR notification (T+10 days)

Draft and file preliminary proxy statement with SEC (T+15 days)[2]

SEC reviews, has no comments to proxy statement; proxy statement mailed to shareholders (T+25 days)

If applicable, HSR waiting period expires (T+40 days)

Hold special shareholder meeting approve merger; target "fiduciary out" expires (T+60 days)[3]

Consummate merger if conditions otherwise satisfied (T+61 days)

Shareholder review

Total timing

T+61 days
Approx. 9 weeks[4]

Timeline Considerations

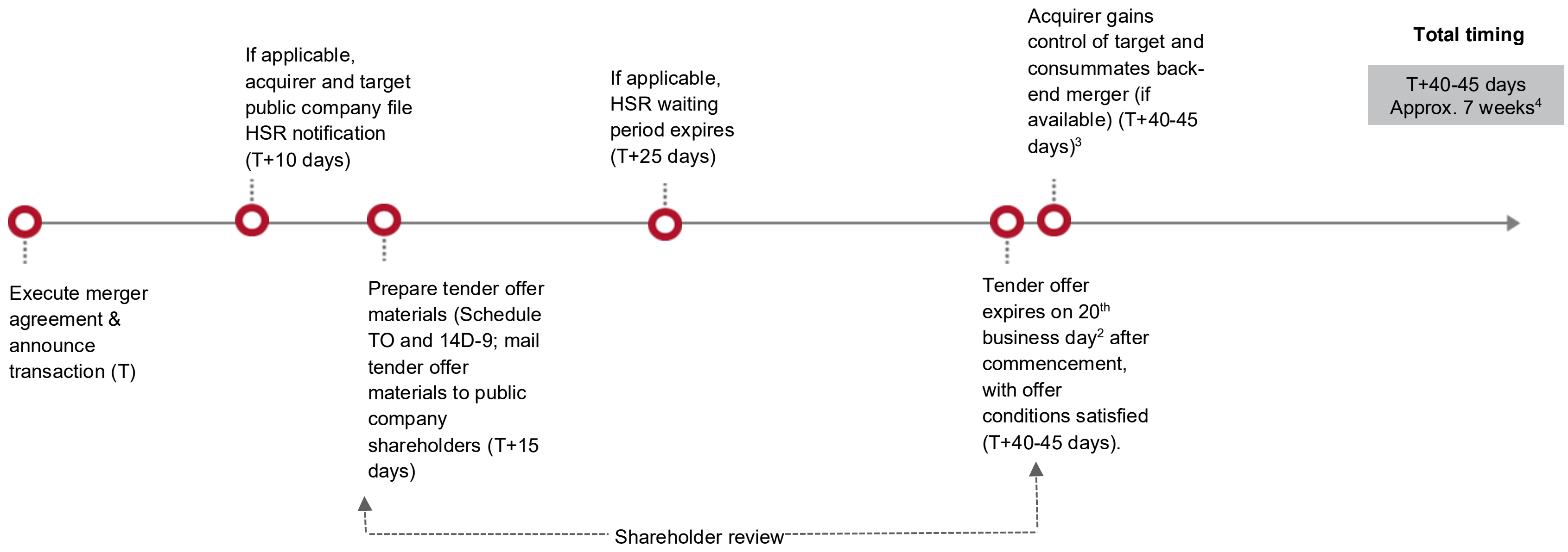
1 HSR waiting period is 30 days for merger (unless second request received).

2 SEC rules require a preliminary proxy statement filing at least 10 calendar days before a definitive statement may be mailed to permit the SEC to confirm whether it will review and comment on the statement. There is no express minimum time period for distributing merger proxy materials under SEC rules; however, stock exchange rules recommend at least 30 days to permit shareholders adequate time to review proxy materials; for S-3 eligible target companies, the proxy statement/prospectus must be sent to shareholders at least 20 business days prior to meeting date if information about registrant or target is incorporated by reference into proxy statement. The minimum and maximum meeting notice period are also governed by the target's applicable state corporate law and organizational documents; for Delaware corporations, the typical meeting notice period range is 10 to 60 days before the applicable meeting date.

3 Scheduling the special meeting for 35 days after proxy mailing is a typical period to provide sufficient time to solicit proxies but nonetheless promptly hold the meeting in accordance with applicable, typical state law notice periods and obtain approval.

4 Timeline may be extended depending on the nature and scope of SEC comments (SEC comments would otherwise delay proxy mailing and shareholder vote, typically delaying meeting by approximately 2-6 weeks following receipt thereof), delays caused by HSR (including HSR "second requests" for information) or CFIUS clearance and shareholder litigation.

Two-step, all cash tender offer (Step 1) and merger (Step 2) (indicative timeline)[1]



Execute merger agreement & announce transaction (T)

If applicable, acquirer and target public company file HSR notification (T+10 days)

Prepare tender offer materials (Schedule TO and 14D-9; mail tender offer materials to public company shareholders (T+15 days)

If applicable, HSR waiting period expires (T+25 days)

Tender offer expires on 20th business day[2] after commencement, with offer conditions satisfied (T+40-45 days).

Acquirer gains control of target and consummates back-end merger (if available) (T+40-45 days)[3]

Shareholder review

Total timing

T+40-45 days
Approx. 7 weeks[4]

Timeline Considerations

1 HSR waiting period is 15 days for an all-cash tender (unless second request received).

2 If there are any material changes to the terms of the tender offer, these must be disclosed, and the period during which shareholders may tender their shares in the target public company must be extended under SEC Rule 14e-1 under the Exchange Act (the SEC generally expects a minimum extension of 5 business days).

3 Indicative timeline assumes that acquirer has received a sufficient number of tendered shares to consummate a backend merger and that the squeeze out merger can proceed without a shareholder vote under Section 251(h) of the Delaware General Corporation Law (for further discussion, see "7.1 Squeeze-out procedures").

4 In addition to the above, the timeline may be extended for delays caused by HSR (including HSR"second requests" for information), or CFIUS clearance and shareholder litigation.

Shares Consideration and Timelines – In a transaction in which any of the offered consideration is an acquirer's shares, the timelines will generally be the same regardless of whether the acquisition is effected as a "two-step" merger or a "one-step" merger. That is because, in either transaction form, it will be necessary to file a registration statement with the SEC to register the shares or other securities issuable as merger consideration unless a registration exemption is available under SEC rules. The registration statement, if required, will be subject to review and comment by the SEC staff before it is declared effective, and preparation of a registration statement can extend the transaction timeline based on the complexity of required disclosures, such as pro forma financial statements of the combined business. Neither a "one-step" nor a "two-step" merger that includes registered share consideration may be consummated before such effectiveness. Additionally, NYSE and Nasdaq listing rules require acquirer shareholder approval before an acquirer public company may issue 20% or more of their shares as consideration. This approval, if required, would require a buyer to conduct a meeting and proxy solicitation process under SEC rules itself. Such process would be run in parallel to the offer and exchange process.

Timelines Generally – A number of events, some noted in the timelines, can extend the time frames set forth including, but not limited to, a second request for information by the FTC or DOJ under the HSR Act, a CFIUS review of the transaction, extensions of the tender offer period if tenders of the desired number of target public company shares have not been received, or postponement of a shareholders' meeting to obtain the required shareholder vote.

6. Takeover Tactics

6.1 Tender offer procedures

Application of US Tender Offer Rules – Section 14(d) and Section 14(e) of the Exchange Act and SEC Regulations 14D and 14E generally regulate US tender offers by a third party. A tender offer for registered equity securities may also be subject to Rule 13e-3 under the Exchange Act if it is made by the issuer or its affiliate and would result in the issuer going private, which can include offers by non-controlling shareholders or offers where the target's senior management is "engaged in" the transaction. Although Section 14(e) of the Exchange Act, as well as the rules promulgated thereunder, contain anti-fraud and anti-manipulation provisions that specifically apply in the context of tender offers, the general anti-fraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 under the Exchange Act also apply to tender offers.

Whether, and the extent to which, these laws and regulations apply is a function of (i) whether a specified transaction qualifies as a tender offer under available US judicial guidance, (ii) whether the target company qualifies as an FPI, (iii) whether a target security in the tender offer is an equity security registered under the Exchange Act, and (iv) whether the holders of the target security are US residents.

Somewhat counterintuitively, tender offers principally conducted outside the US involving the securities of a non-US target company that seemingly has little or no connection with the US may nonetheless implicate US federal securities laws if at least 10% of target securityholders are US residents.

- *Tender Offer Definition* – "Tender offers" are not formally defined by federal statute or SEC rule or regulation. Rather, the SEC and practitioners have come to rely on two different judicial tests to determine whether a particular transaction constitutes a tender offer. While the details of those judicial tests are beyond the scope of this chapter, acquirer offers made to all shareholders of a target company to purchase target company shares, whether on a hostile basis or in a two-step merger, are considered to qualify as tender offers under those tests.

- *FPI Definition* – Key exemptions from US tender offer procedures as described further below depend on whether the target company qualifies as an FPI. An FPI is defined as any issuer (other than a foreign government) that is a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country EXCEPT an issuer meeting both of the following conditions:
    - *US shareholder test* – More than 50% of the issuer's outstanding voting securities are directly or indirectly held of record by US residents; and
    - *US business contacts tests* – Any one of the following is true:
        - the majority of the executive officers or directors are US citizens or residents;
        - more than 50% of the issuer's assets are located in the US; or
        - the issuer's business is administered principally in the US.
- *US Registration* – If a target company has any class of equity securities registered in the US under the Exchange Act, which will be the case if, for example, a target company has a class of shares listed on a national US exchange, such registration will generally trigger applicable US tender offer disclosure requirements under Section 14(d) of the Exchange Act and SEC Regulation 14D, along with certain procedural requirements like the all holders / best price rules summarized below, unless an exemption is available based on the target company shareholders' level of US residency as described below.
- *Location of Target Company Shareholders and FPIs* – US tender rules provide two key exemptions from various disclosure and procedural rules based on securityholder residency for target companies that qualify as FPIs. Those exemptions are as follows:
    - *Tier I* – Under the so-called Tier I exemption, if
        - US holders hold 10% or less of the target securities;
        - US holders of the target securities are permitted to participate in the tender offer on terms at least as favorable as those offered to other holders of the target securities, subject to certain exceptions;
        - Bidder provides informational documents to holders of the target securities in the US, in English, on a basis comparable to that provided to holders of the subject securities in its home jurisdiction; and
        - The target company is not an "investment company" or registered or required to be registered under the under the US Investment Company Act of 1940, other than a registered closed-end investment company,

      then the bidder, the target company and applicable tender offer qualify for broad relief from most US tender offer rules. These exemptions include:

        - No minimum offer period requirement;
        - No prescribed advanced notice required for an offer extension;

  - No prescribed timing requirement to pay consideration or return tendered securities;
  - No specific form of response required from the target company;
  - Purchases may be made outside the tender offer, subject to certain further conditions noted generally below; and
  - Even if the target equity securities are registered under the Exchange Act, there is no requirement for the bidder or target company to file offer materials or responses with the SEC (though SEC filings might still be required to satisfy the informational document condition noted immediately above), nor do procedural requirements, like the all holders / best price rules summarized below, apply.

- *Tier II* – More limited relief from US tender rules is available under the so-called Tier II exemption. That exemption provides that, if
  - US holders hold 40% or less of the target securities;
  - The target company is not an "investment company" or registered or required to be registered under the US Investment Company Act of 1940, other than a registered closed-end investment company;
  - The target company is an FPI; and
  - The bidder otherwise complies with all applicable US tender offer laws and regulations other than those for which the Tier II exemption applies,

  then the bidder, the target company and the tender offer would qualify for certain selective relief from US tender rules, with the key provisions summarized generally as follows:

  - A bidder may split its offer into multiple separate offers, one to US holders and the other(s) to non-US holders, so long as US holders are treated as favorably as any other holder;
  - A bidder may provide notice of extensions of its offer under the requirements of the target company's home jurisdiction, rather than comply strictly with the requirements noted below under US tender rules in connection with offer duration;
  - A bidder may suspend back-end withdrawal rights before offers are accepted while tendered securities are counted;
  - A bidder may pay for securities tendered under the law or practice of the target company's home jurisdiction rather than promptly as required by US tender rules noted below on payment;
  - A bidder may early terminate an offer period before scheduled expiration without a potential delay for material amendment as might be required under US tender rules if certain conditions to such early termination are satisfied, including that a minimum 20 business day offer period has already elapsed;

- Purchases outside the tender offer are permitted subject to certain conditions as noted generally below but which conditions are more restrictive than under Tier I (e.g., such purchases cannot be made in the US under Tier II);
- If the target equity securities are registered under the Exchange Act, there is no relief from a bidder and target company's obligations to file SEC-compliant offer documents, including a target position statement as described below, but there is more limited relief available from various technical procedural aspects generally tied to registered equity securities (including the ability make separate US and non-US offers subject to certain conditions).

<u>Calculating US Holders</u> – To determine the number of US holders of a target security and confirm the application of a Tier I or a Tier II exemption, a bidder must conduct the following analysis:

- *Look-Through Analysis* – A bidder must look not only at the residency of security holders of record but also must "look through" record holders that are brokers, dealers and banks (and their nominees) as of a certain date (generally, no more than 60 days before, and no more than 30 days after, the public announcement of the transaction) to determine the US residency of the underlying account holders. Such look-through analysis must be conducted in the US, the subject company's jurisdiction of organization and the jurisdiction that is the primary trading market for the target securities if different from the jurisdiction of organization. The inquiry need only confirm the aggregate amount of the nominee's holding that corresponds to US accounts, but the obligation to look through requires that reasonable inquiry be made of nominees to determine the residency of their account holder customers. If, after reasonable inquiry, the bidder is unable to determine the beneficiary, it may assume that the owners are residents in the jurisdiction of the nominee's principal place of business. If the tender offer is friendly, the bidder should send or request that the subject company send letters to brokers, dealers, banks, and other nominee holders inquiring about the aggregate amount of their holdings that correspond to US accounts.
- *Analysis Timing* – US ownership may be calculated in negotiated transactions at any date up to 60 days before and 30 days after the public announcement of the business combination. Where a bidder cannot perform the look-through analysis in the prescribed 90-day period, it may do so as of the most recent practicable date before public announcement, but not earlier than 120 days before public announcement. The calculation should, in any case, be conducted before commencement of the tender offer.
- *Alternative Test* – SEC rules provide that a bidder may presume the application of the Tier I or Tier II exemptions if (i) the bidder cannot conduct the requisite look-through analysis (typically in the context of hostile tender offers) and there is a primary trading market for the subject securities outside the US or (ii) the bidder is not an affiliate of the target company and proposes to conduct a business combination other than under an agreement with the subject company (i.e., a non-

negotiated transaction or hostile takeover). In these cases, the bidder may presume application of such exemptions unless:

- The average daily trading volume ("**ADTV**") of the target securities in the US exceeds 10% or 40%, as applicable, of the worldwide ADTV during a recent 12-month period ending no more than 60 days before the public announcement of the business combination;
- Any filing with the SEC, the target company's home regulator, or the jurisdiction of the targets primary trading market, indicates that US holders hold more than 10% or 40%, as applicable, of the target securities; or
- The bidder knows or has reason to know, before the public announcement of the tender offer, that the level of US ownership exceeds 10% or 40%, as applicable.

Procedural Requirements – Under Section 14(d) of the Exchange Act and SEC Regulations 14D and 14E, tender offers in the US must generally be conducted in accordance with the following requirements (in addition to applicable disclosure requirements and certain additional technical procedural requirements):

- *Duration* – The offer must initially be held open for at least 20 business days. In addition, the offer must remain open for a minimum of (i) 10 business days (pursuant to an extension, if necessary) following any increase or decrease in the percentage of the target company shares sought in the offer, the consideration offered, or the soliciting dealer's fee, or (ii) a minimum of 5 business days following any other material change in the terms of the tender offer (including any material waiver of any material terms). Offer extensions must be announced by press release issued by the earlier of 9:00 a.m. Eastern time and the opening of trading on the exchange where the securities are listed on the day following the scheduled expiration date.
- *All holders; best price* – The offer must be made to all holders of the class of securities subject to the offer, and all tendering holders, including those who tendered prior to an increase in the offered consideration, must receive the same consideration per share.
- *Withdrawal rights; subsequent offering period* – Tendered securities may be withdrawn at any time while the offer remains open. After termination of the offer period and acceptance of tendered shares, the acquirer may continue to accept shares for a "subsequent offering period" of from three to 20 business days. Statutory withdrawal rights are not available for shares tendered during a subsequent offering period.
- *Purchases outside the offer* – Subject to certain exceptions, from the time the offer is first announced to the expiration date, the acquirer and its affiliates, the acquirer's dealer-manager and its affiliates, and a financial advisor to any of them if the advisor's compensation depends on the successful completion of the tender offer, may not purchase or arrange to purchase securities in the target public company subject to the offer, or securities convertible into or exchangeable for such securities, other than pursuant to the tender offer. The exceptions include purchases outside the offer in certain tender offers for the shares of FPIs in accordance with the target's home country law, subject to compliance with specified conditions, including disclosure.

- *Pro rata acceptance* – In an offer for less than all outstanding securities of the class being sought, if a greater number of securities than the maximum number sought are tendered, acceptance of tendered shares must be pro rata.

- *Prompt payment or return* – The tender offer consideration must be paid, or tendered securities must be returned, promptly after termination or withdrawal of the offer.

- *Target company position* – The target public company must take a formal position regarding the tender offer within 10 business days after commencement of the offer by filing and distributing a Schedule 14D-9. In a friendly transaction, the target public company's Schedule 14D-9 is usually filed contemporaneously with the acquirer's Schedule TO, which includes the offer to purchase that is provided to the target public company shareholders, and the Schedule 14D-9 is distributed to the target public company shareholders together with the offer to purchase.

6.2 Deal protection

In a negotiated transaction, the executed transaction between an acquirer and a target public company is subject to topping bids by interloping bidders, until the shareholder approval is obtained (or the tender offer is closed). In light of this, the acquirer can enter into agreements with the target public company and its shareholders to protect the deal from competing offers. The availability of such measures will depend upon the applicable state corporate law, but such measures may include:

- *Agreements with shareholders* – An acquirer can enter into agreements with one or more significant shareholders in which they agree to tender their shares into the acquirer's tender offer or vote in favor of the proposed merger, as the case may be. Depending on the jurisdiction, an irrevocable proxy may be used to enforce the tender/voting agreement. Acquirers should bear in mind that an agreement that grants an acquirer the right to acquire the shares or to direct the voting of the shares may constitute the acquirer as the beneficial owner of the shares covered by the agreement under Section 13(d) of the Exchange Act and obligate the acquirer to file a Schedule 13D prior to the actual purchase or other acquisition of the subject shares.

- *"No-shop" clauses* – A "no-shop" provision in a merger agreement limits the target public company's ability to seek or facilitate competing bids, subject only to the fiduciary duties of the target public company's directors. As noted above, a target public company may insist on the ability to conduct an "active" market check of the merger terms through a "go-shop" clause permitting the target public company to solicit other bids for a negotiated period of time or a "passive" market check allowing the target public company to entertain a superior, competing offer made after public announcement of the merger agreement but without solicitation of other bids. An acquirer may also negotiate for the right to match any such superior offer.

- *Break-up fees* – A break-up fee is a termination fee paid by a target public company to compensate an acquirer for termination of the merger agreement in favor of a competing bidder. It is necessary that a balance be struck between the amount necessary to compensate the buyer and a fee so high that the cost of bearing the break-up fee discourages competing bidders. Also, state corporate laws limit the amount of such fees, generally to below 5% of the transaction value, typically measured based on equity value. Alternatively, in some cases, bidders will agree to pay a reverse break-up fee, i.e., a fee payable by the bidder to the target public company upon termination, as consideration for the right to terminate the merger agreement upon specified conditions.

- *Shareholder rights plans* – An acquirer can enter into an agreement with the target public company requiring the target public company to adopt a shareholder rights plan to discourage third parties from accumulating shares in the open market sufficient to maintain a "blocking position".

In US public company acquisition transactions, representations and warranties by a target public company do not survive the closing of the transaction, and post-closing indemnification rights and/or escrow of a portion of the merger consideration (which are customary in private company acquisitions) as well as representation and warranty insurance (increasingly common in private company acquisitions) are generally not practicable to the acquirer or customary.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

7.1 Squeeze-out procedures

- *Completing the merger* – Under US state corporate laws, once a merger has been authorized in accordance with statutory requirements, i.e., by shareholder vote or action of the acquirer if it holds the requisite number of shares, it is completed by filing articles or a certificate of merger in the state or states of organization of the parties to the merger. Upon completion of the merger, it is binding on all target company shareholders, regardless of whether they voted in favor of the merger (or had no vote because the merger was effected as a short-form merger without shareholder approval).

- *Effecting the squeeze-out* – The merger agreement will provide for the conversion of the securities of the target company into the merger consideration. Upon completion of the merger, the outstanding shares of the target company (other than shares owned by the acquirer) cease to be outstanding and are converted into the right to receive the merger consideration, subject to the rights of dissenting shareholders who perfect their appraisal rights to receive the appraised value of their shares. In the case of a negotiated long-form merger, completion of the merger eliminates all public shareholders; in a second-step short-form merger following a tender offer, the squeeze-out eliminates shareholders who did not tender their shares into the offer.

- The time advantage conferred by the "two-step" merger, as shown in the indicative timeline above at "5. Timelines", assumes that the acquirer is able to acquire sufficient shares in the tender offer such that, after step 1, the acquirer will be able to effect the step 2 squeeze-out merger via a "short form" statutory merger without holding a shareholder vote (under Section 253 of the Delaware General Corporation Law, the relevant threshold is 90%). Upon failing to do so, the acquirer and the target public company may find themselves in a position of needing a shareholder vote of the target public company shareholders (even if the acquirer, alone, holds the requisite majority shares to approve the acquisition transaction, typically 50% plus one, subject to the target public company's corporate documents), thereby putting the acquirer and the target public company on the path of initiating a proxy solicitation process similar to that they may have otherwise taken by implementing a "one-step" merger (and losing all benefit of time saved by pursuing the "two-step" merger). Traditionally, to try to avoid this scenario, acquirers would typically provide flexibility in their merger agreement permitting them to engage in subsequent tender offer offering periods or entitling them to purchase authorized but unissued shares from a target public company (the so-called top-up option), but these are not perfect solutions (for example, a subsequent tender has no guarantee of resulting in additional tendered shares). Effective in 2013, Section 251(h) of the Delaware General Corporation Law was intended to address this scenario for those target public companies organized in Delaware. Under the section, subject to satisfying the requirements thereof (as described below), if a friendly acquirer acquires sufficient votes to approve the long-form merger of a target public company, it can consummate the second step merger without holding a separate vote. The requirements of Section 251(h) are (i) that the merger agreement expressly provide for the application of 251(h); (ii) that the acquirer consummate a tender for all of the outstanding shares of the target company; (iii) that following the offer, the acquirer and its affiliates have (through previous holdings or tendered shares) sufficient shares to approve the acquisition transaction if a shareholder meeting were to be called; (iv) that the acquirer in the tender offer merge with the target company in the acquisition transaction; and (v) that each outstanding class of target company shares not tendered is converted in the merger into, or the right to receive, the same amount and kind of cash, property, rights or securities to be paid for such class of target company shares as were tendered.

- The approach of Section 251(h) has not been widely adopted into other states' M&A statutes, but since Delaware is the jurisdiction of incorporation of a majority of US-organized public companies, it is available more often than not.
- *Asset deals* – In a takeover effected as an asset acquisition, in lieu of a squeeze-out, all shareholders of the target company would be eliminated through dissolution and liquidation of the target company, with the consideration received by the target company in the asset sale being distributed to the shareholders. Both the sale of all or substantially all of the target company's assets and the dissolution and liquidation of the target company would be submitted to shareholders of the target company for approval. As previously noted (see "4.8 Appraisal Rights of Minority Shareholders"), Delaware law does not provide appraisal rights for dissenting shareholders in asset sales. Other state corporate laws vary in this respect. In an asset deal, in addition to the complexity of transferring all of the assets of a public company, it is necessary to provide for possible unknown or contingent liabilities of the target company. In contrast, in both a "one-step" and "two-step" statutory merger, this issue does not arise because all of the target company's liabilities – known or unknown, fixed or contingent – become the obligations of the acquirer by operation of law upon the merger's effectiveness (or remain the obligations of the target company if the target company becomes a subsidiary of the acquirer in the merger). For these reasons, acquiring a public company through an asset acquisition is rare.

8. Delisting

In US parlance and M&A practice, "going private" refers to a takeover transaction that usually includes a squeeze-out of public company shareholders effected by an affiliate (or by an affiliate acting with an outside party), which could be a controlling shareholder or shareholder group or the target public company's management. The object of a going private transaction is to cause the target public company to become privately held. However, a public company may terminate its SEC periodic reporting requirements without going completely private. This is sometimes referred to as "going dark" because the public company is no longer obligated to furnish information to the SEC. This requires that the company both delist from the stock exchange where is it listed *and* de-register under the Exchange Act.

8.1 Delisting

A stock exchange will generally delist the shares of a public company upon notice to the exchange by the public company. The exchange can also delist a public company for violations of the exchange's continuing listing requirements, such as a share price below the minimum price mandated by those requirements or failure to comply with SEC reporting requirements. Following delisting, however, the company may continue to be subject to SEC reporting requirements because, for example, the delisted shares will continue to be registered under, or the company will have an obligation to register them under, the Exchange Act as long as the delisted company has at least 300 shareholders of record (1,200 if the company is a bank, a bank holding company or a savings and loan holding company). Additional steps beyond delisting must be taken to terminate the company's SEC reporting obligations.

8.2 Deregistration and termination of reporting

To terminate Exchange Act registration and SEC reporting obligations, a company must file a Form 15 with the SEC certifying that the class of securities registered under the Exchange Act is held of record by:

- less than 300 persons (1,200 if the company is a bank, a bank holding company or a savings and loan holding company); or
- less than 500 persons if its total assets have not exceeded US$ 10 million on the last day of each of its last three fiscal years.

Deregistration is effective 90 days following filing of the certification, but reporting obligations are suspended immediately. Reporting obligations are reinstated if the certification is withdrawn or denied.

8.3 Take-private transactions

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

The following are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in the United States:

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Venezuela

1. Overview

Venezuelan laws and regulations contain a specific set of regulations governing public bids for the acquisition of stock in a listed company ("**Target Company**") in Venezuela. In addition, Venezuelan tax regulations include an incentive for this type of transaction since any sale transaction of stock executed through a local stock exchange is subject to income tax at a flat rate of 1% over the gross amount of the transaction, disregarding the amount of tax gain or loss resulting thereunder. In this regard, the sale of stock outside of a stock exchange is subject to income tax at a rate of 34% over the tax gain resulting thereunder. The 1% tax will be withheld at the source by the purchaser at the moment of payment; although there are strong arguments based on rulings of the Internal Revenue Service that non-domiciled entities may not be required to withhold Venezuelan taxes.

As a consequence, several Target Companies in different economic sectors have been subject to public takeovers by local and multinational companies during the last few decades in Venezuela, although their number and volume remain low as compared to other markets.

2. General Legal Framework

2.1 Main legal framework

The main rules and principles of Venezuelan laws regarding public bids for Target Companies are contained in:

(a) The Securities Markets Law ("**SML**"); and

(b) The Rules on Public Offers to Acquire, Exchange and Take Control of companies subject to public offering of their shares and other rights over them ("**OPA Rules**").

Public takeover bids are subject to the regulatory powers of the National Superintendence of Securities Office ("**SNV**"), which is vested with the powers to control and regulate the capital markets in Venezuela.

As a general matter, the SNV has discretionary powers to supervise, control and enforce compliance with the SML and the OPA Rules during any public takeover bid in Venezuela. Such powers entitle the SNV to implement any mechanism it considers necessary and/or convenient to protect the interests of the Target Company's minority stockholders. In addition, the SNV is empowered to apply administrative fines in case of breach of the regulations and even to request criminal prosecution before the competent courts upon the occurrence of certain breaches of such regulations.

Please note that the SNV is also entitled to grant certain exemptions from the rules on public takeover bids that would otherwise apply, when the situation is duly justified and when such exception does not affect the rights of the minority stockholders of the Target Company.

2.2 Foreign investment regulations

Foreign Investments in Venezuela are governed by the Constitutional Law of Productive Foreign Investments ("**LCIEP**"), published by the Extraordinary Official Gazette No. 41,310 dated 29 December 2017, and issued by the National Constituent Assembly.

The LCIEP abrogated and superseded Decree No. 1,438 with Rank, Value and Force of the Law of Foreign Investments, published in the Extraordinary Official Gazette No. 6,152 dated 18 November 2014 ("**LFI**"). Notwithstanding the entering into force of the LCIEP, the National Executive has not yet issued the required regulations.

Under the LCIEP, the Ministry of the People's Power with competence in trade matters is the governing entity with the mandate to establish policies for fulfilling the purposes of the LCIEP. Its scope of powers was significantly expanded under the LCIEP, in comparison with the LFI, to include more implementing powers such as the administration of the registry of foreign investments. However, its current implementation of the powers is unclear. In practice, the Foreign Trade Bank (BANCOEX) is the foreign investments authority, which is, as of 1 January 2025, providing information and services regarding registration requests.

No governmental prior approval is required for foreign investments in Venezuela. However, the LCIEP, provides that foreign investments must be registered in order to be recognized by the government. To benefit from the rights set forth in the LCIEP and applicable laws, investors must register their direct foreign investments. As a result, the rights of foreign investors will only become effective after registration. The LCIEP has not yet provided the procedures, requirements or conditions to register a foreign investment. In practice, although the regulations of the LCIEP have not been issued yet, BANCOEX is receiving requests for the registration of investors and investments, including the filing of certain forms providing information about such investment and the submission of documents.

Once registered, the foreign investment authority will issue a Certificate of Registration of Direct Foreign Investment to reflect the amount in United States dollars. Foreign investors must update the Certificate if there is a modification of the information related to the investment or investors in the company.

(a) Treatment of direct foreign investment

The principal requirements set forth in the LCIEP regarding the treatment of foreign investments are the following:

- The LCIEP requires that 100% of the constitutive value of foreign investments should be represented by assets (physical or intangible) located in Venezuela.
- Subject to express authorization from the governing body, the minimum amount to register a foreign investment is the equivalent of (i) EUR 800,000.00 or (ii) RMB 6,500,000.00 or (iii) their equivalent in any other foreign currency.
- Foreign investments should remain in the country for at least two years; after that period, investors can make certain remittances abroad.
- Foreign investors may distribute dividends, and at the end of the first fiscal year, up to 100% of the profits or dividends derived from their registered and updated foreign investment. In cases of force majeure or extraordinary economic situations the National Executive may reduce this percentage to between 60% to 80% of the profits.
- The LCIEP includes a general provision whereby the National Executive can limit remittances in cases of extraordinary circumstances that affect the economic and financial safety of the nation. The scope of this general limitation is not clear regarding the specific limits indicated in the previous paragraph.
- After two years foreign investors can remit to their country of origin any income obtained from selling their shares or investments in Venezuela, or from a capital reduction.

- The LCIEP maintains the rights of foreign investors to totally or partially reinvest the profits obtained in local currency (to be recognized as foreign investment).
- Pursuant to Article 31 of the LCIEP, if a company that has received foreign investment is liquidated, the total amount of the registered foreign investment may be remitted abroad.

(b) Notices

The following matters must be notified to the governing entity (expected to be the Ministry of the People's Power) according to the LCIEP:

- Any kind of investment in domestic or foreign companies which are in the national territory, made after the initial registration of a foreign investment through the purchase or sale of shares or other titles, credits, mergers, acquisitions or any other means that does not involve the real investment of capital, but merely financial. Any transaction of this nature that is carried-out without giving notice to the governing entity will be rendered void.
- The reinvestment of profits under the provisions of the LCIEP. The governing entity may raise objections to such transaction within 60 days following the filing date.

(c) Inspection powers, preventive measures and sanctions

Under the LCIEP, the governing body for foreign investments has a wide range of powers, including dictating administrative control mechanisms, designating public prosecutors for control and audit of foreign investments and soliciting information from foreign companies. Additionally, the governing body has powers to issue preventive measures, which are not specified but will be developed in the Regulations of the LCIEP.

Failure to comply with the LCIEP carries a fine up to 2% of the total investment, with another 1% added if more than one obligation is not met. In the case of a repeated failure to comply, 3% will be added to the total fine. Fines must be paid in the same currency as the original investment, and within 15 working days from the applicable notice.

(d) Jurisdiction

The LCIEP states that disputes must be subject to the jurisdiction of the Venezuelan courts and does not permit international arbitration. The LCIEP provides certain limited exceptions to this and allows the use of other dispute resolution mechanisms within the framework of the integration of Latin America and the Caribbean.

Venezuela has also executed a number of bilateral agreements for the promotion and protection of investments with Argentina, Barbados, Germany, Belarus, Canada, Chile, Costa Rica, Cuba, Denmark, Ecuador, Spain, France, United Kingdom, Iran, Lithuania, the Netherlands, Paraguay, Peru, Portugal, Czech Republic, Sweden, Switzerland, Uruguay, Palestine, Libya, Syria, and Belgium-Luxembourg Economic Union. As a result, disputes that may arise between a foreign investor whose country of origin is one with which Venezuela has a treaty or agreement in force for the promotion and protection of investments, could be submitted to international arbitration under the terms of the respective treaty. The treaties with Brazil, Russia and Italy have not entered into force yet. The treaty between Venezuela and the

Netherlands ended on 1 November 2008 and the treaty between Venezuela and Ecuador ended on 16 May 2017. However, with respect to investments made prior to the date of termination of the treaties, their provisions remain in force for a period of 15 years and 10 years, respectively, from the date of termination.

2.3 General principles

As a general matter, under the SML and OPA Rules, the stockholders of a Target Company must be afforded equivalent treatment and if a person or entity intends to acquire a significant participation or control of such Target Company, the stockholders must have the same opportunity to sell and must be protected.

In this regard, according to the SML and the OPA Rules, any person and/or entity ("**Bidder**") that intends to indirectly or directly acquire, in a single act or through successive acts, shares representing more than 10% of the capital stock (a "**Significant Participation**") of a Target Company, or the control over such Target Company disregarding the percentage of shares to be acquired, must comply with the procedures established by the SNV for such purposes.

3. Before a Public Takeover Bid

According to the SML and the OPA Rules:

(a) From the beginning of any action focused on the study and planning of a public takeover bid, the Bidder, the officers of the Bidder and its partners are considered to be in possession of inside information and, therefore, must keep the information strictly confidential until the offering is disclosed as required in the OPA Rules. This also applies to the Target Company and its officers if they are aware of the offering.

(b) Any individual having access to inside information regarding the offering cannot transmit such information to third parties before its disclosure to the market according to the OPA Rules, nor act or allow any action on the basis of such inside information seeking economic or financial benefits in general, either for themselves or for third parties, whether as profits or by avoiding losses. Those who, in the exercise of their profession, work, or powers, have had access to inside information and use it in any activity related to the stock market, consequently obtaining an economic benefit for themselves or for third parties, may be punished with fines and even criminal prosecution.

4. Effecting a Takeover

As mentioned hereinabove, any Bidder that intends to indirectly or directly acquire, in a single act or through successive acts, a Significant Participation in a Target Company, or the control over such Target Company disregarding the percentage of shares to be acquired, must comply with the procedures established by the SNV for a public acquisition offering ("**OPA**"), a public exchange offering ("**OPI**") and a control-taking public offering ("**OPTC**"), as the case may be.

(a) OPA is the procedure applicable to a Bidder that intends to acquire a Significant Participation in a Target Company offering cash as consideration.

(b) OPI is the procedure applicable to a Bidder that intends to acquire a Significant Participation in a Target Company offering securities as consideration.

(c) OPTC is the procedure applicable to a Bidder that intends to acquire shares of a Target Company in order to gain a controlling interest in such company, which enables the Bidder to control the decisions of its stockholders' meeting, regardless of the participation to be acquired and the consideration offered.

The procedures for any OPA, OPI, and OPTC are compulsory notwithstanding: (a) the mechanism to be used for the acquisition, including private negotiations and acquisitions through stock exchanges; (b) whether the acquisition is made in a single act or through successive acts; and (c) the legal structure to be used for the acquisition.

A Bidder that does not comply with the applicable procedures for OPA, OPI and OPTC will not be entitled to exercise the rights derived from the shares acquired, and any decision adopted with their participation will be null and void.

5. Timeline

The following is a description of the main steps that should be followed by a Bidder to execute a public takeover bid of a Target Company according to the OPA Regulations:

(a) Registration of the Target Company with SNV

The Target Company must be previously registered with the Registry of the SNV. Any registration must contain the following information with a letter:

(i) General and financial information on the Target Company, its shareholders and administrators, including a copy of the Tax Information Registry (RIF), domicile, website address and social media accounts.

(ii) Information regarding the activities that the Target Company performs.

(iii) A two-page executive summary describing the products and services (relating to stock exchange matters) used by the Target Company.

(iv) Copy of the Articles of Incorporation/Bylaws.

(v) Commercial, credit and banking references (three of each).

(vi) Certified statement by the Target Company, its shareholders and administrators declaring its solvency of, and its compliance with tax, labor, and social security obligations.

(vii) List of assets of the Target Company.

(viii) Statement of dividends and their payment schedule.

(ix) Any other document or information deemed necessary by the SNV.

(b) Request for SNV's authorization

The Bidder must file with the SNV a clear and detailed report on the offering ("**Report**") at least five stock market days before the date on which the bid is to be disclosed to the public, sufficiently supported so that the persons to whom the offering will be made may be reasonably aware of its content. The Report must be drafted in terms that an investor who does not have specialized financial knowledge can understand, and must contain, among other things, the following information:

(i) An abstract of the Report ("**Summary**") containing the basic items of the Report which will allow an investor to have an idea of the proposed negotiation.

(ii) General and financial information on the Bidder and its administrators.

(iii) Information regarding the purpose of the offering, the Bidder's intentions concerning the Target Company and a description of the origin of the funds used to make the offering.

(iv) Information regarding the current shareholding percentage of the Bidder in the Target Company.

(v) Information regarding the Bidder's relationship with the Target Company, its shareholders and administrators.

(vi) Specific conditions of the offering, including:

- Number or percentage of shares of the Target Company that the Bidder wishes to acquire and a firm statement of intent to acquire them under the conditions proposed in the Report;
- Price or exchange rate to be offered as consideration;
- Payment conditions;
- Guaranties offered to the sellers;
- Term of the offering;
- Rules for pro-rating, if any; and
- Preparatory legal negotiations concerning the offering to which the Bidder is a party.

(vii) Description of the consequences arising from the application of certain special laws to the proposed transaction, such as the Law for the Protection and Promotion of Free Competition, the Banking Sector Institutions Law, or the need for authorization from any governmental agency, if required by law.

(c) SNV's authorization of the offering

The SNV has a period of five stock exchange business days to authorize the disclosure of the Report, starting on the date the report is filed by the Bidder. If the SNV requests that changes be made to the Report, this period shall begin to run from the moment the modified Report is filed by the Bidder.

The Report shall be confidential until its disclosure is authorized by SNV.

(d) Disclosure of the offering

Once disclosure of the Report has been authorized by the SNV, both the Report and its Summary must be circulated as soon as possible by means of:

(i) Publication of the Summary in two national newspaper.

(ii) The filing of the Report with the Venezuelan stock exchange and the Target Company.

(iii) The publication of sufficient copies of the Report so as to deliver it to any person who requests it from the principal office of the Target Company or the Bidder.

(e) Term of the offering

The initial term of the offering shall be freely determined by the Bidder, but shall not be less than 20 stock exchange business days or more than 30 stock exchange business days after the actual starting date of the offering. This term may be extended before its expiration upon the Bidder's prior request for authorization from the SNV, which will have three stock exchange business days to decide on the extension. The extensions to the original term of the Offering cannot exceed a total of 30 stock exchange business days after the original date of expiration of the offering.

(f) Actions of the shareholders and administrators of the Target Company

From the moment the Report is disclosed, or before if they are aware of it, the controlling shareholders and administrators of the Target Company are prohibited from engaging in any actions other than the simple administration of the Target Company, without first sufficiently disclosing the information in connection with these actions to the SNV, the stock exchange and the mass media at least five stock exchange business days in advance of the acts. The SNV may make observations regarding acts of disposition and may order their publication.

(g) Observations on the offering by the Target Company

The Target Company shall submit its comments or observations regarding the offering to the SNV and the stock exchange no later than the fifth stock exchange business day following the disclosure of the Report. These comments shall be made public, upon prior notice to the SNV, by publication in two major national newspapers. The observations on the offering shall also be filed with the stock exchange and the Bidder. The Target Company may only make additional observations if any new events arise that call for them.

(h) Competing offerings

Any person may make a competing offering, thus becoming a Bidder. They must file a Report on the competing offering with the SNV at least seven stock exchange business days before the expiration of the initial offering. This Report must meet all the requirements demanded of the original offering. Both the original offering and the competing offering shall be valid for the same term. For this purpose, the term of the original offering will be extended for it to concur with the competing offering.

(i) Modification of the Report

Any modification to the Report and any notification, memorandum or disclosure report must be submitted to the SNV for authorization, which will then have a term of three stock exchange business days to grant the respective authorization for disclosure.

Any Bidder of an offering may make bids improving the conditions of its offering up to the tenth stock exchange business day before the expiration date of its offering. The new conditions must be extended to all the shareholders of the Target Company that have already accepted the offering. The SNV has three stock exchange business days after the filing date to authorize the disclosure of the modified Report containing the new offering conditions. The term of the offering shall be extended for as many days as the SNV has taken to grant its approval, which shall not be more than three stock exchange business days, unless the SNV agrees on a longer term.

(j) Advertising of the offering

Any advertisement, promotion or disclosure of the offering must be submitted for authorization by the SNV at least three stock exchange business days prior to the date it is to be made.

(k) Acceptance of the offering

Acceptance of the offering must be communicated to the Bidder at the place, time and in the manner set forth in the Report. If at the time of closing the offering is not fully subscribed it, shall be deemed to be unsuccessful, unless the Report contains a contingency clause whereby an offering is considered fully subscribed if at least 75% of the shares have accepted the offering.

(l) Revocation of the offering by the Bidder

(i) Until its starting date, the offering may be revoked at any time by means of a reasoned and justified statement, having first notified the SNV, filed it with the stock exchange and published it in two national newspapers.

(ii) From the starting date, the offering may be revoked up to three stock exchange business days before the closing date, by means of a reasoned and justified statement submitted for the SNV's authorization. However, this revocation may only be admitted:

- if a competing offering is made; or
- if there are exceptional circumstances not imputable to the Bidder.

(iii) Until the transaction is settled, the offering is revocable if there is a decision by any competent agency opposing or subjecting the transaction to other conditions.

(m) Repeal of the acceptance by the stockholders of the Target Company

The acceptance may only be repealed in the event of a competing offering or an outright bid, provided the acceptance has taken place prior to the competing offering or bid. The Report must expressly refer to this limitation.

(n) Notice of the outcome of the offering

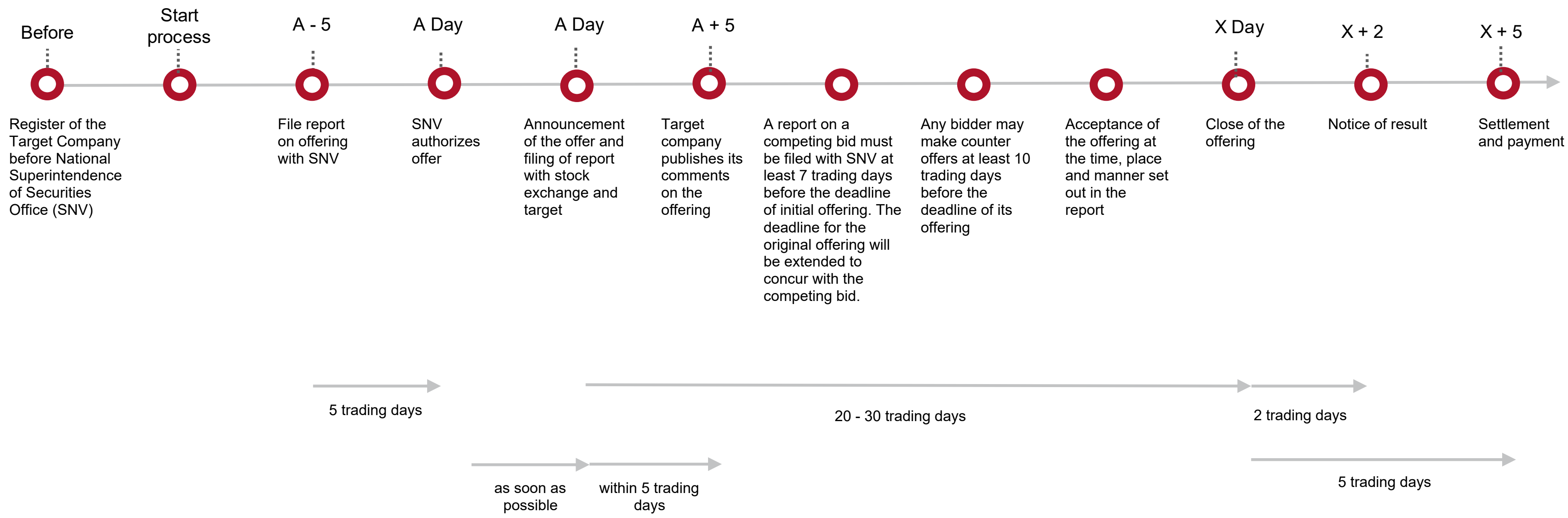
The SNV, the Stock Exchange and the general public, by means of a notice published in two national major newspapers, must be notified of the outcome of the offering within two stock exchange business days following the closing of the Offering.

(o) Settlement and payment

The settlement of the transactions for acceptance of the offering shall take place at the stock exchange, pursuant to the methods authorized by the SNV, no later than the fifth stock exchange business day following the closing of the offering.

Set out below is an overview of the main steps for a public takeover bid in Venezuela.

Public takeover bid (indicative timeline)



Before – Register of the Target Company before National Superintendence of Securities Office (SNV)

Start process

A - 5 – File report on offering with SNV

A Day – SNV authorizes offer

A Day – Announcement of the offer and filing of report with stock exchange and target

A + 5 – Target company publishes its comments on the offering

A report on a competing bid must be filed with SNV at least 7 trading days before the deadline of initial offering. The deadline for the original offering will be extended to concur with the competing bid.

Any bidder may make counter offers at least 10 trading days before the deadline of its offering

Acceptance of the offering at the time, place and manner set out in the report

X Day – Close of the offering

X + 2 – Notice of result

X + 5 – Settlement and payment

5 trading days

20 - 30 trading days

2 trading days

as soon as possible

within 5 trading days

5 trading days

6. Takeover Tactics

Venezuelan laws and regulations do not preclude any action that may be adopted by the Target Company and/or its shareholders to defend themselves from a hostile takeover. In any case, the legality of such defenses must be analyzed on a case by case basis. Poison pills, share buyback and sale of crown jewels have been used in the past against hostile takeovers in Venezuela.

Notwithstanding the above, as a general matter, the OPA Rules provide that the SNV shall open an investigation in order to assess whether a Target Company is trying to prevent the takeover bid and whether the corresponding actions affect the minority stockholders.

7. Squeeze-out of Minority Stockholders after Completion of the Takeover

There are no laws in Venezuela allowing the squeeze-out of minority stockholders following a public takeover. Stockholders have no rights to force the Bidder to purchase their stock if they chose not to participate in the takeover.

8. Delisting

In order to delist a company, Venezuelan laws and regulations require: (i) the previous authorization of the SNV; (ii) a resolution of the stockholders' meeting of the affected company with the affirmative vote of shares representing at least 85% of the stock capital; (iii) if applicable, request the stock exchange to provide a detailed report on the volume of transactions with the listed securities during the last 3 years and certification of the deregistration of the securities listed on such stock exchange; and (iv) any other documentation that the SNV may require.

9. Contacts within Baker McKenzie

Jesús Dávila and Adriana Goncalves in the Caracas office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Venezuela.

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Vietnam

1. Overview

Thanks to its robust economic performance and supportive policy framework, Vietnam continues to be an attractive destination for investors. Overall, M&A transactions in Vietnam have seen steady growth, particularly after Vietnam officially became a member of the World Trade Organization ("**WTO**") in 2007.

Public M&A activity in Vietnam was first officially regulated under the Securities Law passed in 2006. Since then, the Government has introduced a large number of new regulations, which have helped promote the development of public M&A activities in Vietnam.

2. General Legal Framework

2.1 Main legal framework

To keep up with the development of public M&A activities in Vietnam, the Government has gradually evolved the regulatory and legal framework. In particular, the main laws and regulations are:

- Law No. 54/2019/QH14 on securities, passed by the National Assembly on 26 November 2019 ("**Securities Law 2019**");
- Law No. 56/2024/QH155 passed by the National Assembly on 29 November 2024, amending several provisions of, among others, Securities Law 2019 ("**Amendment Securities Law 2024**");
- Law No. 59/2020/QH14 on enterprises, passed by the National Assembly on 17 June 2020 ("**Enterprise Law**");
- Law No. 61/2020/QH14 on investment, passed by the National Assembly on 17 June 2020 ("**Investment Law**");
- Decree No. 155/2020/ND-CP of the Government dated 31 December 2020, providing detailed regulations for implementation of a number of articles of the Securities Law 2019 ("**Decree No. 155**");
- Circular No. 96/2020/TT-BTC of the Ministry of Finance dated 16 November 2020, which provides guidance on disclosure of information in the securities market, as amended by Circular No. 68/2024/TT-BTC of the Ministry of Finance dated 18 September 2024
- Circular No. 116/2020/TT-BTC of the Ministry of Finance dated 31 December 2020, which provides guidance on corporate governance of public companies under Decree No. 155;
- Circular No. 118/2020/TT-BTC of the Ministry of Finance dated 31 December 2020, which provides guidance on offering and issuance of securities, tender offer, share repurchase, registration and cancellation of public companies; and
- Circular No. 51/2021/TT-BTC of the Ministry of Finance dated 30 June 2021, which provides guidance on obligations of organizations and individuals in foreign investment activities in the Vietnam's stock market.

While the aforementioned legislation contains the main legal framework for public M&A in Vietnam, there are a number of additional legal instruments that are to be taken into account when preparing for conducting such transactions, such as:

- the general regulations on M&A activities, including the Civil Code and the Law on Competition;
- international treaties and agreements to which Vietnam is a contracting party, e.g., free trade agreements, the WTO, etc.;
- regulations on certain business areas that are specifically governed, e.g., banking and finance, education, insurance;
- regulations on State-owned enterprises; and
- regulations on other relevant matters, including, among others, land, the foreign exchange market, labor, and tax.

2.2 Principles for conducting a public tender offer

A public tender offer to acquire shares in a public company must adhere to the following principles:

- The conditions of the offer must apply equally to all shareholders of the target company.
- Parties participating in the public tender offer must be provided with complete information to enable access to the offer.
- Parties participating in the public tender offer must respect the right of shareholders of the target company to make their own decision.
- The investor must appoint a securities company to act as an agent for the offer.

2.3 Regulatory authorities

In Vietnam, a public tender offer is subject to supervision and control by the Ministry of Finance, in particular, the State Securities Commission of Vietnam ("**SSC**").

The Ministry of Finance ("**MOF**") has a number of legal tools that it can use to supervise and enforce compliance with public tender offer rules, such as administrative fines. The MOF also has the power to issue specific guidance and regulations applicable to a public tender offer.

Moreover, depending on the specific activities, sectors and target companies, public takeover bids may be under the supervision of other relevant regulatory authorities.

2.4 Foreign investments

See 3.3 below.

3. Before a Public Takeover Bid

3.1 Shareholding rights and powers

Under Vietnamese law, a joint stock company may issue different types of shares, each of which will entitle shareholders to different rights and interests. The types of shares that a joint stock company may issue include:

- common shares;

- voting preferred shares, which are a type of share that holds a greater number of votes than a common share (only issued to (a) founding shareholders during the first three years from the company establishment date, and/or (b) organizations authorized by the Government);
- dividend preferred shares, which are a type of share where the shareholder will be paid dividends at a higher rate in comparison with the dividends paid to a common shareholder or at an annual fixed rate;
- redeemable preferred shares, which are a type of share that entitles its holder to a return of the contributed capital by the company upon the request of the holder or in accordance with the conditions stated on the redeemable preferred share certificates and the company's charter; and
- other types of preferred shares prescribed by the company's charter and the legal framework on securities.

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a joint stock company in Vietnam:

Shareholding Level	Rights and Powers
One common share	• To participate in and speak at the General Meetings of Shareholders ("**GMS**") and exercise the right to vote in person, through an authorized representative or in accordance with another method stipulated by law or the company's charter. Each common share will have one vote; • To receive dividends at the rate determined by the GMS; • To have priority in buying the new shares offered for subscription corresponding to the proportion of common shares held by the shareholder in the company; • To freely transfer their share to another person, except (i) in the 3-year lock-up period applicable to founding shareholders and (ii) in instances where the company's charter provides for restrictions on share transfers; • To review, search for and make an excerpt from the information in the "Roster of Shareholders having the Right to Vote" and request for rectification of the inaccurate information therein; • To review, search for information in, make an excerpt from or photocopy the company's charter, minutes of the GMS and resolutions of the GMS; and • To receive a portion of the remaining assets corresponding to their proportion of share ownership in the company where the company is dissolved or bankrupt.
1% or more common shares	In their own name or in the name of the company, to initiate legal action (on a personal or joint liability basis) against the members of the Board of Management ("**BOM**") or the (General) Director of the company for the refund of benefits or payment of compensation for

Shareholding Level	Rights and Powers
	loss to the company or to others if such member of the BOM or the (General) Director: (a) commits a breach of the responsibilities of managers of the company; (b) fails to implement or fails to implement completely and promptly their assigned rights and obligations or implements the same contrary to the provisions of law, the charter of the company or the resolutions and decisions of the BOM; (c) abuses their position and power or uses information, knowhow, business opportunities and other assets of the company for their own personal benefit or for the benefit of other organizations or individuals; or (d) other cases in accordance with law and the charter of the company.
5% or more common shares (or a smaller proportion as stipulated by the charter)	• To review and make an excerpt from the minutes book and resolutions of the BOM, the mid-year and annual financial statements, the reports of the Control Committee, the contracts and transactions, subject to BOM's approval, and other documents, except those related to commercial and trade secrets of the company; • To request the convening of a GMS in certain instances or to convene the GMS if the BOM or the Control Committee fails to do so; • To propose matters to be included in the meeting agenda of the GMS; • To request the Control Committee to examine each specific matter relating to the management and administration of the company's activities when deemed necessary; • To request for an abolition of a GMS resolution by Vietnamese courts or arbitration; and • Other rights under the provisions of the Enterprise Law and the company's charter.
10% or more common shares (or a smaller proportion as stipulated by the charter)	• To nominate candidates to the BOM and the Control Committee; and • Other rights under the provisions of the Enterprise Law and the company's charter.
More than 35% (but less than 50%) of the total number of votes (of all of	The veto right against GMS resolutions in relation to special matters (a 'super majority') at a meeting. Special matters include:

Shareholding Level	Rights and Powers
the shareholders attending the GMS)	• Types/classes of shares and total number of shares in each type/class; • Change to the industries/lines or areas of business; • Change to the company's managerial and organizational structure; • The company's investment or sale of its assets with a value to equal to or greater than 35% of the total value of assets stated in the most recent financial statements of the company (or another smaller proportion or value as stipulated by the company's charter); • The company's reorganization or dissolution; and • Other matters as stipulated in the company's charter.
50% or more of the total number of votes (of all of the shareholders attending the physically-held GMS)	The veto right against GMS resolutions on any matters at a meeting other than (a) election of BOM members by cumulative votes, and (b) any adverse change of rights and obligations of a preference shareholder (which requires the votes of shareholders representing at least 75% of the total number of preference shares).
50% or more of the total number of votes (of all of the shareholders having voting rights in case of adopting resolutions by way of collecting written opinions)	The veto right against GMS resolutions adopted by way of collecting written opinions, except for any adverse change of rights and obligations of a preference shareholder (which requires the votes of shareholders representing at least 75% of the total number of preference shares).
More than 50% (but less than 65%) of the total number of votes (of all of the shareholders attending the physically-held GMS)	Adopt GMS resolutions on matters at a meeting other than (a) those requiring a super majority, (b) election of BOM members by cumulative votes, and (c) any adverse change of rights and obligations of a preference shareholder (which requires the votes of shareholders representing at least 75% of the total number of preference shares).
More than 50% of the total number of votes (of all of the shareholders having voting rights in case of adopting resolutions by way of collecting written opinions)	Adopt GMS resolutions by way of collecting written opinions, except for any adverse change of rights and obligations of a preference shareholder (which requires the votes of shareholders representing at least 75% of the total number of preference shares).
65% or more of the total number of votes (of all of the shareholders attending the physically-held GMS)	Adopt GMS resolutions on any matters, including those that require a super majority at a meeting, except for (a) election of BOM members by cumulative votes, and (b) any adverse change of rights and obligations of a preference shareholder (which requires the votes of

Shareholding Level	Rights and Powers
	shareholders representing at least 75% of the total number of preference shares).
80% or more shares of a public company	Acquire the remaining shares within 30 days from the completion of the previous public tender offer (see 7 below).

3.2 Due diligence

Vietnamese law on public tender offer rules does not contain specific regulations regarding the question of whether a prior due diligence needs to be undertaken, or how such due diligence process should be organized. Hence, from the authorities' perspective, whether a prior due diligence has been undertaken before carrying out the public tender offer or not is not an issue. That being said, as a matter of practice, the concept of a prior due diligence or pre-acquisition review by an investor is generally accepted by the business community for the purposes of avoiding potential obstacles and mitigating potential risks during and after the acquisition. Nonetheless, the authorities would still expect all relevant parties to strictly comply with the rules on insider trading.

3.3 Restrictions and careful planning

Vietnamese law contains a number of rules that would apply before a public tender offer is announced. Some careful planning is therefore necessary if a potential investor or a target company intends to start a process that is to lead towards a public tender offer.

(a) Foreign investment

Foreign investors, when investing in Vietnam by establishing a new entity or acquiring an existing company, are subject to market access conditions. Such conditions are provided for under Vietnam's international trade commitments as well as domestic regulations. It is important to note the business sectors which are subject to conditions that may hinder foreign investors from carrying out the acquisition or otherwise affect the foreign investors' objectives in carrying out such acquisition.

For instance, according to Vietnam's WTO commitments, foreign investors and foreign invested enterprises are not allowed to distribute drugs and pharmaceuticals in Vietnam. Accordingly, the common interpretation of the authorities is that an economic organization with even 1% of foreign ownership would be considered as a foreign-invested company and is prohibited from distributing third party drugs. In Vietnam, we have observed cases where certain investment structures are being established to enable the investing or acquiring entity to be considered a domestic investor, thereby, the operating company will be considered a domestically owned company. In any case, the foreign investor should be mindful of these potential challenges.

Also, under Decree No. 155, the foreign ownership limitations in public companies are as follows:

- Where foreign ownership limits in a business sector have been agreed by Vietnam under an international treaty, public companies are subject to the ownership limits set out in those treaties.
- Where foreign ownership limits in a business sector are set out in Vietnamese law, those limits also apply to public companies.

- If a public company operates in a business sector that is subject to foreign investment market access restrictions, those access restrictions will apply. If the market access list does not specify the foreign ownership limit in any sector, the maximum foreign ownership for a public company operating in that sector is 50% of the company's charter capital.
- If none of the above circumstances apply, the foreign ownership is unlimited.
- A public company has multiple business lines that are subject to different foreign ownership caps, the final foreign ownership is the lowest cap among them.
- A public company may elect to apply a different foreign ownership cap (that is lower than the statutory cap), provided that it is approved by the GMS and specified in its charter.

A public company with a foreign ownership ratio exceeding the maximum permitted ratio must ensure that there will be no further increase in such ratio. The foreign shareholders of such public company shall only have the right to sell their shares until the foreign ownership ratio is within the permitted range (except in the cases of receiving dividend shares or subscribing for more shares that are issued to all existing shareholders on a pro rata basis).

In addition to market access restrictions, governmental prior approval will be required for foreign investment in public companies operating in specific industries. For example, foreign investment in public companies in the banking sector will require the State Bank of Vietnam's prior approval, whereas foreign investment in public companies in the insurance sector will require the Ministry of Finance's prior approval. During the planning process, foreign purchasers need to be mindful of all the market access conditions to determine relevant matters in relation to the public tender offer, e.g., the maximum number of shares that they may be permitted to acquire in the target company. If the proposed acquisition fails to meet the conditions as provided for under law, the acquisition/public tender offer is likely to be rejected by the competent authorities in Vietnam.

(b) Acting in concert

Vietnamese law does not define "acting in concert". However, it provides for the concept of "affiliated persons" which encompasses the following persons/entities:

- an enterprise and its internal personnel; a public fund or public investment company and its internal personnel;
- an enterprise and any organization or individual that holds more than 10% of voting shares or stakes of such enterprise;
- an organization or individual who in a relationship with another organization or individual directly or indirectly controls or is jointly controlled by such other organization or individual, or is subject to the same control with such other organization or individual;
- an individual and his/her biological parent, adoptive parent, parents-in-law, spouse, biological child, son- or daughter-in-law, siblings, brother- or sister-in-law;

- a securities investment fund management company and securities investment funds or securities investment companies managed by such securities investment fund management company;
- a contractual relationship in which one organization or individual is the representative of the other;
- any other organization or individual being an affiliated person as stipulated in the Enterprise Law.

According to Vietnamese regulations on public tender offers, the aggregate amount of the shareholding of the purchaser and its affiliated persons in the target company will be a factor that may trigger the public tender offer requirement (see 4.1). If, after the tender offer, the number of shares owned by the investor along with its affiliated persons reaches 5% or more of the voting shares of the company, they will together be considered "major shareholders" and will therefore be required to carry out certain disclosure procedures (see 3.5).

3.4 Insider trading

The Securities Law 2019 and Decree No. 155 contains provisions dealing with insider trading in the context of public companies. Specifically, the acts of (i) using inside information to buy securities for oneself or for others and (ii) disclosing or supplying inside information or advising others to buy or sell securities based on inside information, are all prohibited.

Under Decree No. 155, the target company, internal persons and affiliated persons of the target company, the tender offer agent and any other person having information about the tender offer must not (i) take advantage of inside information for purchasing or selling securities for themselves and (ii) disclose such information to or incite or induce other persons into purchasing or selling securities before the official commencement of the public tender offer.

A person committing these prohibited acts would be subject to administrative sanctions, including monetary fines with the value ranging from VND 1 billion to VND 1.5 billion (approximately US$40,000 to US$60,000) and confiscation of the illegal earnings.

Under Penal Code No. 100/2015/QH13 ("**Penal Code 2015**"), which is effective from 1 July 2016 and Law No. 12/2017/QH14 amending and supplementing some articles of Penal Code 2015, which took effect on 1 January 2018, the criminal liabilities that may be applied to the person committing these prohibited acts would include (i) monetary fines of up to VND 5 billion (approximately US$200,000), or (ii) imprisonment with a term of up to 7 years. Additional sanctions would then comprise (i) monetary fines of up to VND 200 million (approximately US$80,000), or (ii) being banned from holding certain positions or being banned from practicing certain professions or performing certain jobs for a period between 1 - 5 years.

Under Penal Code 2015, both a company or an individual may be subject to criminal liabilities for certain crimes, including the acts of (i) using inside information to buy securities, or (ii) disclosing or supplying inside information to others, or advising others to buy or sell securities based on the inside information. A company committing these crimes would be subject to a monetary fine of up to VND 10 billion (approximately US$400,000). Such company may also be suspended from doing business or operating in certain fields or banned from mobilizing capital for a period of 1 - 3 years.

3.5 Disclosure of shareholdings

The rules regarding the disclosure of shareholdings apply before and after a public tender offer.

Pursuant to these rules, when the potential investor intends to conduct the public tender offer, it must first register the tender offer with the SSC (the procedure of which is set out in 3.6 below). Amongst the documentations to be submitted to the SSC is the "announcement of the public tender offer", which follows the template provided by the Ministry of Finance. Under this template, the potential investor will have to disclose its current shareholding level before the public tender offer.

After the public tender offer is completed, the investor is required to submit a report to the SSC on the result of the public tender offer within five days, and to make a public announcement of the same. This report must include the number of shares owned by the investor and the shareholding ratio of the investor in the target company before and after the public tender offer.

In addition, if, after the public tender offer, the investor becomes a major shareholder, i.e., directly or indirectly owning 5% of the voting shares of the company, the investor must report to the target company, the SSC and the stock exchange where the company's shares are listed within five days from the date the investor becomes the major shareholder.

3.6 Announcements of a public tender offer

Prior to announcing the public tender offer to the public, the investor is required to register its proposed tender offer with the competent authorities of Vietnam. Specifically, the investor needs to send a registration dossier to the SSC and the target company. The dossier comprises several documents, including a "public tender offer registration form" whereby the investor discloses information on the public tender offer, number of shares it proposes to buy and the purchase price and an "announcement of the public tender offer" whereby the investor discloses information about the target company, its relationship with the target company, its current shareholding in the target company, number of shares it proposes to buy, purchase price and timeline for the public tender offer.

The BOM of the target company will need to review the registration dossier of the investor. Within 10 days from the date of receipt of the application dossier, the BOM of the target company must disclose its opinions in respect of the public tender offer to the SSC and its shareholders. The opinions of the BOM must be made in writing. If any members of the BOM have a different opinion, then the BOM must include such opinion when making the disclosure of information.

The law entitles the SSC to 15 days to examine the application dossier submitted by the investor and respond in writing to the investor if there is any amendment/supplementation that needs to be made to the application dossier by the investor.

Within seven working days from the date the investor receives the opinion of the SSC that the application for tender offer has been complete, the investor will make a public announcement regarding its tender offer, for at least three days, on the investor's website (if any), the website of the tender offer agent and the website of the stock exchange (if the target company is listed on any stock exchange).

After the tender offer is publicly announced, the investor may still withdraw its tender offer in certain limited cases, as stipulated below:

- where the number of shares registered for sale does not reach the minimum percentage which has been announced in the public tender offer registration form submitted to the SSC;
- where the target company increases the number of voting shares via conversion of preference shares;
- where the target company reduces the number of voting shares;
- where the target company issues additional shares, convertible bonds, bonds with warrants attached or options to purchase; or

- where the target company sells its assets valued at 35% of the total asset value based on the most recent financial statements.

Cases in which it is permitted to propose withdrawal of a public tender offer must be specified in the tender offer registration dossier.

In order to withdraw the tender offer, the investor is required to submit a notification to the SSC within three working days from the date of occurrence of any of the events mentioned above. Within three working days from the date of receipt of the proposal for withdrawal, the SSC will provide its written response. Upon receiving the SSC's approval for withdrawal, the investor must make a public announcement of the withdrawal on its website (if any), on the website of the tender offer agent and the website of the stock exchange (if applicable) within 24 hours after receipt of SSC's approval.

Otherwise, if the investor proceeds with the bidding process, then once the public tender offer is completed, the investor must submit a report to the SSC on the result of the public tender offer and make a public announcement regarding the same. These reporting obligations must be done by no later than five days from the completion date of the tender offer.

Furthermore, to ensure the equality and fairness of the public tender offer, during the period commencing from the time when the investor sends the registration dossier to the SSC until when the tender offer is completed, the investor must disclose the same information at the same time to the shareholders.

3.7 Disclosures by the target company

Vietnamese law provides for rules around the target company's obligations to disclose information about the public tender offer.

The target company needs to announce its receipt of the tender offer on its website and the stock exchange where its shares are listed within three working days after receiving the application dossier for the bidding registration. The BOM of the target company has 10 days to review the application dossier and must send the BOM's opinions on the public tender offer to the SSC and its shareholders within this time limit.

Under Decree No. 155, the target company, internal persons and affiliated persons of the target company, the tender offer agent and any other person having information about the tender offer must not (i) take advantage of inside information for purchasing or selling securities for themselves and (ii) disclose such information to or incite or induce other persons into purchasing or selling securities before the official commencement of the public tender offer.

After the public tender offer, if there are changes with respect to the shareholding level of major shareholders in the target company, the target company must make a public announcement on its website for three working days upon its receipt of the major shareholders' notice on the same.

4. Effecting a Takeover

4.1 Compulsory public offer and exceptions

There are some scenarios where the purchaser is obliged to conduct the acquisition via a public tender offer, including:

- a purchaser and their affiliated person intend to purchase voting shares to, directly or indirectly, hold in aggregate 25% or more of the total voting shares in a public company;
- a purchaser and their affiliated person, holding in aggregate 25% or more of the total voting shares in a public company, intend to acquire more shares and such

acquisition will result in their direct or indirect shareholding reaching or exceeding each threshold of 35%, 45%, 55%, 65% and 75% of the total voting shares in such public company; or

- except for where the public tender offer has been made for all voting shares in a public company, if an investor and their affiliated persons collectively hold 80% or more of the total voting shares in a public company after a public tender offer, then they must continue to offer to acquire shares from the remaining shareholders for 30 days, with conditions on purchase price and payment methods remaining similar to those of the preceding public tender offer.

There are also certain cases where the proposed acquisition is not required to be done via a public tender offer:

- purchase of newly issued shares leading to ownership of any percentage stipulated in the above thresholds pursuant to an issuance plan as having been adopted by the GMS of the target company;
- receipt of transfer of voting shares leading to ownership of any percentage stipulated in the above thresholds as having been approved by the GMS. In such case, the GMS must specify the transferor and the transferee;
- transfer of shares as between companies operating as a group of companies, comprising economic groups, corporations and parent - subsidiary companies and leading to cross ownership in accordance with the Enterprise Law;
- any organization or individual owns shares in a public auction of securities for sale or in an offer tranche upon transfer of State capital or capital of a State-owned enterprise invested in another enterprise;
- any organization or individual owns shares as a result of division, separation, consolidation or merger of companies;
- donation of or bequeathing shares; or
- transfer of shares pursuant to a legally effective verdict or decision of a court or an arbitral award.

4.2 Offered price determination

Vietnamese law sets out general principles which the investor must comply with in determining the bidding price, according to which:

(a) In case of payment by money:

  (i) the offer price must not fall below the average reference price of the last 60 trading days before the application is submitted and must not fall below the highest purchase price of the other tender offer(s) with respect to the target company during this period;

  (ii) during the process of tender offer, the investor must not reduce the offer price;

  (iii) in case the offer price is increased, the investor must announce the price increase at least seven days before the last date for receipt of registrations to sell. In addition, the investor also has to ensure that the increased price will be applied to all registered sellers. In this case, the investor must have sufficient funds to pay for the increased amount due to the increase in the offer price.

(b) In case of payment by shares, shares swap ratio must be approved by the GMS of the investor in accordance with the laws.

Under Decree No. 155, the duration of a public tender offer must be a minimum 30 trading days and a maximum 60 trading days as from the date of commencement of receipt of registrations to sell or registrations to swap as determined in the tender offer registration dossier.

5. Timeline

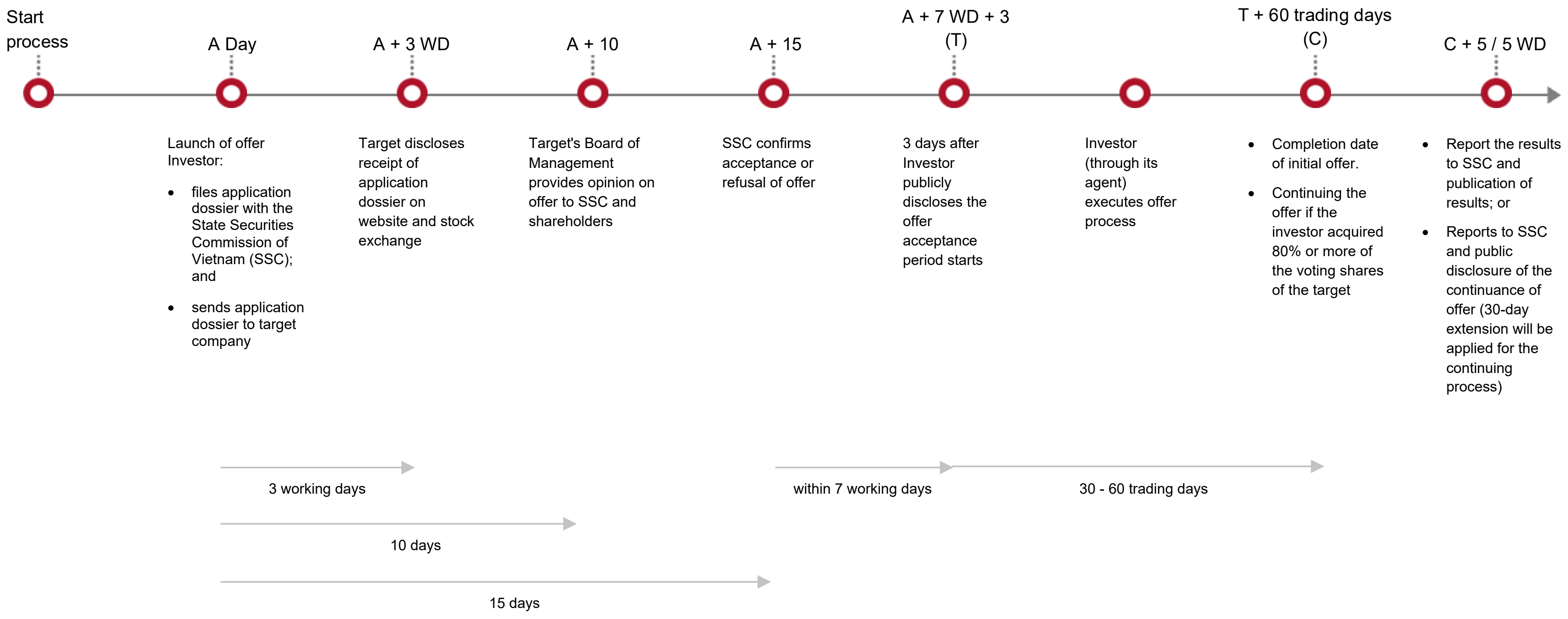
The table below contains a summarized overview of the main steps of a typical public tender offer (referred to in the table as the 'offer') process under Vietnamese law.

Step	
1.	Preparatory stage: • Preparation of the offer by the investor (study, due diligence, financing, application dossier for the offer, etc.). • Prepare bank guarantee or certificate of blockade of the bank account of the investor evidencing that it has sufficient money to launch the tender offer. • Appointment of a licensed securities company to act as its agent for the offer. • If the acquisition is subject to a filing under the Competition Law of Vietnam, the investor must have obtained a clearance issued by the Ministry of Industry and Trade confirming that the proposed acquisition (as a result of the tender offer) is permitted under Vietnam's Competition Law before submitting the application dossier to the SSC.
2.	Launching of the offer: • The investor files its application dossier with the SSC. The application dossier must contain, among other things, the prescribed registration form with all the necessary details of the offer, corporate approval of the investor for the offer, the audited financial statement of the last year and/or other documents verifying the financial capability of the investor. • The investor needs to concurrently send such application dossier to the target company. Within three working days from receiving the investor's application dossier, the target company has to make public disclosure of such receipt on the company's website and to the stock exchange where its shares are listed.
3.	Within 10 days from receiving the investor's application dossier, the BOM of the target needs to give its opinion on the offer in written form to the SSC and also disclose the same to the shareholders of the target company.
4.	Within 15 days from receiving a valid and complete dossier, the SSC has to confirm its acceptance/refusal to the offer by sending the offeror a written dispatch.
5.	Within seven working days from the date the investor receives the opinion of the SSC that the application for tender offer has been complete, the investor will need to make a public

Step	
	announcement regarding its tender offer, for at least three days, on the investor's website (if any), the website of the tender offer agent and the website of the stock exchange (if the target company is listed on any stock exchange). After the offer is publicly disclosed, the investor can no longer withdraw the offer, except in certain limited circumstances permitted by the Securities Law 2019 and which have been indicated in the tender offer registration dossier.
6.	Launch of the acceptance period: • Start: at least three days after the day the public disclosure is made following the SSC's approval. • Duration of the offer: not less than 30 trading days and not more than 60 trading days, during which acceptance of the offer and completion of the share transfer procedures (for example, making the payment to the seller, transferring securities to the investor and recording the shares ownership with the Vietnam Securities Depository) should be completed.
7.	The securities company engaged as the agent for the investor executes the offer process by receiving subscription for sale from the current shareholders, allocating the subscription for sale and working with the Vietnam Security Depository for settlement of the sale.
8.	Unless the tender offer is made with a view to acquire all shares of the target, re- opening the offer with the same conditions on the price and payment method is required if the investor acquired 80% or more of the circulated shares of the target company. • Start: from the completion of the initial offer. • Duration: within 30 days. Within five working days from the last date for receipt of registrations to sell or swap, the investor must notify the SSC and at the same time disclose information about continuing the public tender offer on the websites of the investor (if any), the tender offer agent and the stock exchange (if applicable).
9.	Report to the SCC and publication of results within five days of the completion date of the offer.

Set out below is an overview of the main steps for a public tender offer in Vietnam.

Public tender offer (indicative timeline)



Start process

A Day

Launch of offer
Investor:

- files application dossier with the State Securities Commission of Vietnam (SSC); and
- sends application dossier to target company

A + 3 WD

Target discloses receipt of application dossier on website and stock exchange

A + 10

Target's Board of Management provides opinion on offer to SSC and shareholders

A + 15

SSC confirms acceptance or refusal of offer

A + 7 WD + 3 (T)

3 days after Investor publicly discloses the offer acceptance period starts

Investor (through its agent) executes offer process

T + 60 trading days (C)

- Completion date of initial offer.
- Continuing the offer if the investor acquired 80% or more of the voting shares of the target

C + 5 / 5 WD

- Report the results to SSC and publication of results; or
- Reports to SSC and public disclosure of the continuance of offer (30-day extension will be applied for the continuing process)

3 working days

10 days

15 days

within 7 working days

30 - 60 trading days

6. Takeover Tactics

6.1 Due diligence and market abuse rules

The investor is bound by restrictions on insider trading. During the due diligence of the target, or others, if the investor obtains any sensitive information relating to a public company/public fund which has not been disclosed to the public, and which, if being disclosed, may significantly affect the price of such public company's/public fund's securities, the investor is prohibited from using such information to buy or sell securities for themselves or for others; or from accidentally or deliberately disclosing and providing such information or advising others to buy or sell securities based on such information.

6.2 Hostile vs. friendly bids

Vietnamese law does not provide any specific rules relating to a hostile bid. However, it would be useful for the investor to gain support from the target company in order to have access to the target company's information.

6.3 Deal protection methods

Certain deal protection methods, such as exclusivity, break fees and lock- ups, are often used in public M&A transactions in Vietnam.

6.4 Anti-takeover defense mechanisms

Hostile takeovers are still uncommon (as takeovers are not facilitated under the Securities Law 2019) in Vietnam and it also appears that anti-takeover defense mechanisms implemented in other, more developed, jurisdictions are not commonly used in Vietnam yet.

7. Squeeze-out of Minority Shareholders after Completion of the Takeover

Vietnamese law does not have any "squeeze-out" mechanism that allows a shareholder, once it has reached a certain shareholding threshold, to conduct a bid to acquire all the shares of the remaining shareholders even without the consent of such remaining shareholders. Under the current public offer rules in Vietnam, once an investor holds 80% or more shares in the target company, the investor must continue to purchase the remaining shares within 30 days. However, the current rules do not impose any obligation on the remaining shareholders to sell their shares within this time limit. In practice, it is possible for an 80% shareholder to "force" other remaining shareholders to sell out their shares by way of share redemption, by procuring to pass a resolution on reorganization or changes of shareholders' rights/obligations. In accordance with the Enterprise Law, the shareholders voting against such resolution may request the company to redeem their shares.

As alternatives, there are some regulations that can be applied collectively or individually which may result in a dilution of the minority shareholders, such as the company's issuance of new shares to existing shareholders, a merger process and share redemption by the company. Having said that, the application/combination of various methods requires a careful decision- making process whereby the target company must take into account the reasonable interests of the minority shareholders in accordance with Vietnamese law and the company's charter.

8. Delisting

8.1 Methods to take a public company private

Under the Securities Law 2019, a public company must be taken private if it fails to maintain any of the following conditions: (a) it has a paid-up charter capital of VND 30 billion or more, and (b) it has at least 10% of its voting shares owned by 100 or more investors who are not major shareholders.

Amendment Securities Law 2024 further requires that a public company must have equity (instead of only contributed charter capital) of VND 30 billion or more. This amendment will take effect from 1 January 2026. All such conditions are together referred to as the "**eligibility requirements**".

If a company fails to meet the eligibility requirements, Amendment Securities Law 2024 requires the company to report to the SSC within 15 days from the date of such failure. After one year from the date of failure, while Securities Law 2019 allows the SSC to consider the cancellation on its own initiative, Amendment Securities Law 2024 requires the company to submit a cancellation dossier to the SSC for consideration. If the company fails to submit the dossier, the SSC will then consider the cancellation itself. The company must fully comply with the regulations relating to public companies until the date on which the SSC notifies it of the cancellation of the public company status.

Within seven working days from the date of receipt of the notice of the SSC on the cancellation of the public company status, the company shall be responsible for making public disclosure about the cancellation of the public company status on the company's website and other information portals of the SSC and the relevant stock exchange; as well as carrying out the procedures for delisting or deregistration for trading.

The most commonly used method to take a public company private for the time being is to restructure the shareholding structure to reduce the number of shareholders to fewer than 100 by way of, for example, a share transfer by the shareholders or a share redemption by the company.

8.2 Delisting

Securities shall be delisted on the occurrence of any one of the following:

- the public company status has been cancelled pursuant to a notification from the SSC;
- the listed company suspends its main business and production activities, or such activities are suspended, for one year or longer;
- the enterprise registration certificate or operational license for the specialized industry or business of the listed company is revoked;
- there is no share trading on the stock exchange for a period of 12 months;
- shares are not put into trading within 90 days from the date on which the stock exchange approves the listing registration;
- business and production suffer a loss for three consecutive years, or total accumulated losses exceed the amount of paid-up or contributed charter capital, or the equity of the company is negative in the most recent audited financial statements;
- the listed company no longer exists as a result of a reorganization, dissolution or bankruptcy;
- the auditors refuse to conduct an audit of, or disagree with or refuse to provide an opinion on the most recent financial statements of the listed company or have an exceptional opinion for the annual financial statements for three consecutive years;
- the listed company is late in lodging annual financial statements for a period of three consecutive years;
- the SSC or the stock exchange discovers that the listed company falsified its application file for listing;

- the listed company was subject to a penalty for a strictly prohibited offence or conduct as set out under the Securities Law 2019, in particular:
- directly or indirectly acting fraudulently or cheating, falsifying documents, creating false information, disclosing false information, concealing information, or omitting essential information which causes a severe misunderstanding and adversely affects the following activities: offers of securities, listing and trading securities, conducting business and investing in securities, and providing securities services;
- using inside information to purchase or sell securities for oneself or for a third party; disclosing or supplying inside information or advising another person to purchase or sell securities on the basis of inside information;
- committing acts of securities market manipulation which includes one or several of the following acts: (i) using one or more trading accounts of one's own accounts or those of a third party, or colluding in the purchase and sale of securities aimed at creating false supply and demand; (ii) placing orders to buy and sell the same type of securities on the same trading day or colluding with others to buy and sell securities without actual transfer of securities ownership or with the securities ownership transferred within a group in order to create false supply and demand; (iii) continuously buying or selling securities with a controlling quantity at the opening or closing time of the market in order to manipulate securities prices; (iv) trading securities by colluding with or persuading others to continuously place securities buy and sell orders to significantly affect the demand, supply and prices of securities, or manipulate securities prices; (v) offering opinions, whether directly or via the mass media, about a type of security or securities issuer in order to affect the price of that type of security after conducting a transaction and holding the position of that type of security (vi) adopting other methods or performing other trading acts, with or without providing false or inaccurate information to the public, to create artificial demand and supply or manipulate securities prices; or
- organizing the securities market in violation of the Securities Law 2019.
- the listed company is suspended or banned from operating its main business lines or activities;
- the listed company no longer satisfies conditions for listing as a result of merger or split or other restructuring of the companies, or after the completion of merger, split or restructuring, the company fails to carry out the procedures for listing registration, requesting reconsideration of listing conditions or changing listing registration within the specified timeline; or
- the listed company is in serious breach of its obligation to disclose information, fails to complete its financial obligations to the stock exchange or there are other circumstances in which the stock exchange or SSC considers it necessary to require delisting to protect investors' interests.

Securities can be delisted at the request of the listed company if the following conditions are met:

- Conditions for delisting:
- there is a decision from the GMS to delist which was passed in accordance with the Enterprise Law by more than 50% of the number of voting shares of non-major shareholders; and

- delisting may only occur after a minimum two-year period has expired from the date of listing on the stock exchange.
- An application dossier requesting delisting shall comprise:
- a request to be delisted;
- a decision of the GMS (in the case of shares) or of the BOM (in the case of delisting guaranteed warrants) passing such voluntary delisting; and
- a plan on resolving shareholders' interests after delisting as passed by the GMS (in the case of shares).

Any company whose securities are delisted may only register for relisting after trading for at least two years on UPCoM.

8.3 Take-private transactions

You may also refer to Baker McKenzie's Global Guide to Take-Private Transactions, which covers some of the noteworthy features and requirements applicable to take-private transactions.

9. Private investment in public equity (PIPE)

Please refer to Baker McKenzie's Global PIPE Guide for the features and requirements applicable to PIPE transactions.

10. Contacts within Baker McKenzie

Yee Chung Seck and Hoang Kim Oanh Nguyen in the Ho Chi Minh office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Vietnam.

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