Global Public M&A Guide - Philippines

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*This content was last reviewed around January 2025.*

# Overview

## 1. Overview

[Last updated: 1 January 2025, unless otherwise noted]

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.

# General Legal Framework

## 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**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:

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**").

The rules relating to insider dealing and market manipulation (insider trading rules). These rules are contained in the SRC and SRC IRR.

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**").

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**").

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.

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**").

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.

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:

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;

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;

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;

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;

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;

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;

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

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.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

[Last updated: 1 January 2025, unless otherwise noted]

**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 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:

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;

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;

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

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:

through any contract, arrangement, understanding, relationship or otherwise, the power to vote, or to direct the voting of, such security; and/or

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:

background information on the 5% or 10% beneficial owner;

purpose or purposes of the acquisition of securities of the public company;

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

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:

**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.

**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.

**Stockholders' approval** - the issuer must likewise submit a sworn Corporate Secretary's Certificate confirming that its stockholders' approved the transactions resulting in backdoor listing.

**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.

**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.

**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.

**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**

**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).

**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.

# Effecting a Takeover

## 4. Effecting a Takeover

[Last updated: 1 January 2025, unless otherwise noted]

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**

**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.

**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.

# Timeline

## 5. Timeline

[Last updated: 1 January 2025, unless otherwise noted]

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 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.

**5.1 Indicative timeline for a mandatory public takeover**

Click here to view diagram for [Philippines](https://resourcehub.bakermckenzie.com/en/-/media/global-public-ma-handbook/images/timelines/philippines.png)

# Takeover Tactics

## 6. Takeover Tactics

[Last updated: 1 January 2025, unless otherwise noted]

**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:

the insider proves that the information was not gained from such relationship, or

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):

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.

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.

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. |
| **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:

issue any authorized but unissued shares;

issue or grant options in respect of any unissued shares;

create or issue, or permit the creation or issuance of, any securities carrying rights of conversion into, or subscription to, shares;

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

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.

# Squeeze-out of Minority Shareholders after Completion of the Takeover

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

[Last updated: 1 January 2025, unless otherwise noted]

**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.

# Delisting

## 8. Delisting

[Last updated: 1 January 2025, unless otherwise noted]

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.

# Contacts

## 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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