Global Public M&A Guide - The Netherlands

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*This content was last reviewed around January 2025.*

# Overview

## 1. Overview

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

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.

# General Legal Framework

## 2. General Legal Framework

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

**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:

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;

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

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:

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.

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.

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.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

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

**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:

immediate disclosure is likely to prejudice the legitimate interests of the target company;

the delay of disclosure is not likely to mislead the public; and

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.

# Effecting a Takeover

## 4. Effecting a Takeover

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

**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.

# Timeline

## 5. Timeline

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

**5.1 Indicative timeline for a friendly public offer.**

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

# Takeover Tactics

## 6. Takeover Tactics

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

**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.

# 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 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.

# Delisting

## 8. Delisting

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

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.

# Contacts

## 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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