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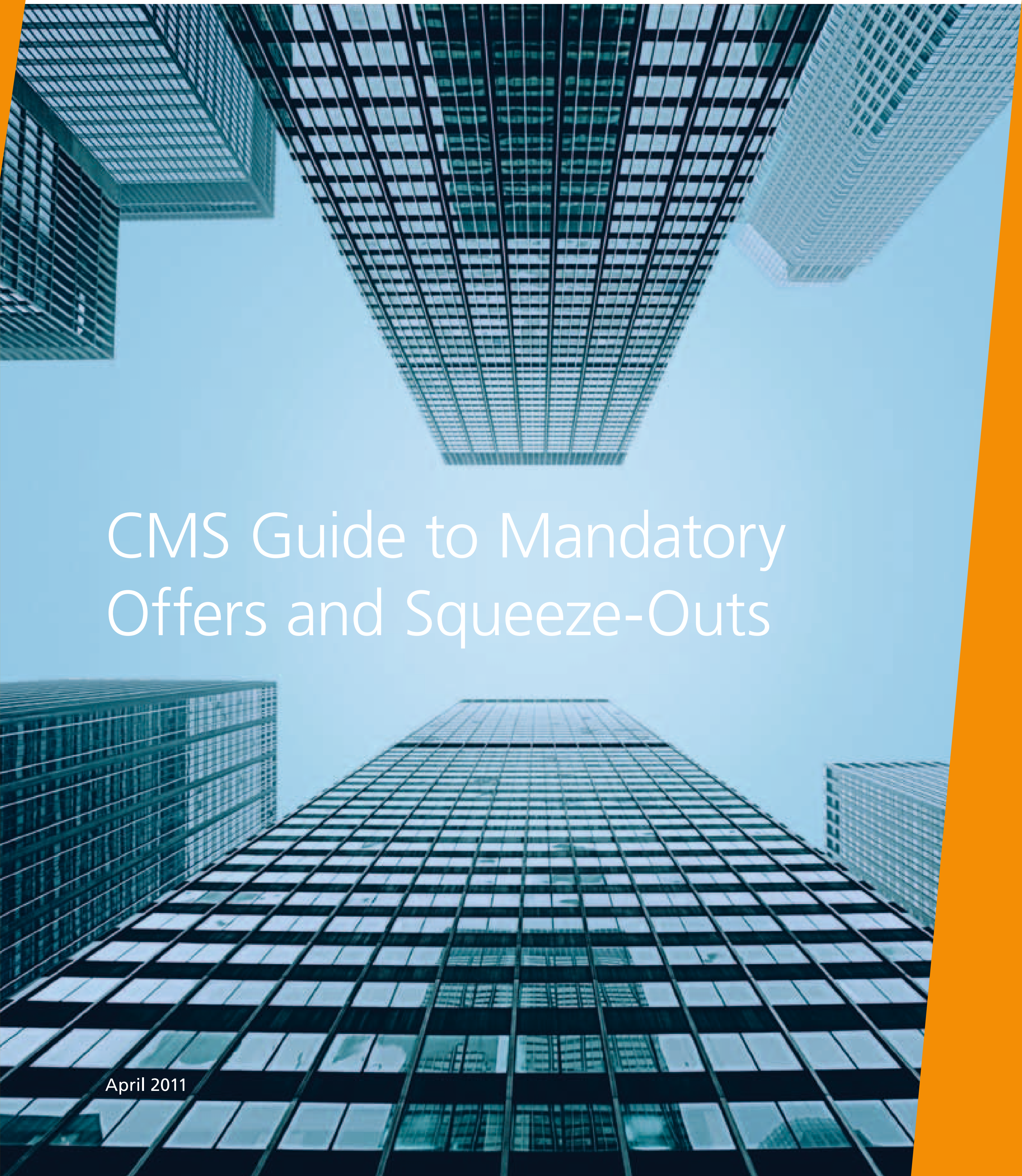


CMS Guide to Mandatory Offers and Squeeze-Outs

April 2011

Introduction

The number of public takeovers announced in Europe increased from 282 in 2009 to 307 in 2010[1]. Many of these public transactions are governed by or otherwise affected by the laws of multiple jurisdictions requiring special cross-border expertise and close cooperation between advisors acting for bidders, target companies and core shareholders alike. The scope and relevance of public takeover law is not limited to classic tender offer scenarios, of course: in numerous instances, such as restructurings of shareholder groups, acquisitions of troubled target companies or approaches by activist shareholders, legal ways and means of avoiding triggering a mandatory offer are being explored. Again, many of these transactions are multi-jurisdictional in nature. Last but not least, the application and interpretation of national squeeze-out regimes has a significant impact on deal economics and timing.

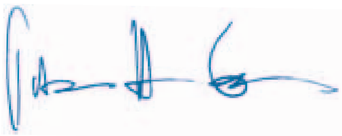
At European level, the Takeover Bids Directive[2] has created a framework setting certain minimum standards for public takeover bids in the EU. The Takeover Bids Directive has required EU Member States to create national legal frameworks based inter alia on the over-arching principles of equal treatment of the target company's shareholders, protection of minority shareholders, ensuring an informed decision by target company shareholders on the merits of a particular takeover bid, and an obligation of the board(s) of the target company to act in the interest of the company. Implementing these principles, the Takeover Bids Directive prescribes minimum standards in relation to trigger events for mandatory offers, the offer price, acceptance periods and the level of disclosure to be provided in context of public takeover bids, as well as the pricing and other terms of squeeze-outs.

At the same time, a number of very important aspects of takeover law such as the rules on board neutrality and break-through have remained optional, and a number of important determinations such as the definition of "control", including the general control threshold itself and the scope of exemptions from the offer requirement, have largely been left to the Member States. This has contributed to a state of affairs whereby "Member States have shown strong reluctance to lift takeover barriers" in the opinion of the European Commission, and "[t]he number of Member States implementing the Directive in a seemingly protectionist way [was] unexpectedly large."[3]

Based on these observations by the European Commission, and with the commencement of the examination and revision period for the Takeover Bids Directive (20 May 2011) approaching, further legislative action at European Union level aimed at removing existing takeover barriers is likely.

Pending such review, this Guide provides an overview of the current legal framework and practice governing public takeovers and squeeze-outs in a total of 21 jurisdictions (15 EU Member States, as well as Switzerland, Russia, Ukraine, Bosnia, Croatia and Serbia) and provides contact details of experienced legal advisors active in this field. The number of countries covered demonstrates the geographic footprint of CMS across Europe and our capability to provide a seamless cross-border service which is also evidenced by CMS' leading rankings in European M&A league tables.

Thomas Meyding
Head of CMS Corporate Group



Peter Huber
Corporate Partner and Editor

[1] Source: mergermarket.
[2] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.
[3] See Commission Staff Working Document, Report on the implementation of the takeover directive, 21 February 2007, SEC (2007) 268, page 10.

Austria

Peter Huber, peter.huber@cms-rrh.com
Dieter Zandler, dieter.zandler@cms-rrh.com

1. What transactions/actions generally trigger a mandatory offer?

— Direct or indirect control through **acquisition of more than 30%** of voting rights;
— **acting in concert** by parties with an aggregate shareholding of more than 30% of voting rights;
— **creeping-in.**

2. What are the principal exemptions from the mandatory offer requirement?

— The acquirer of a controlling interest is **exempted** from the mandatory offer requirement if **deemed not to effectively control the target,** for example if:
- another shareholder (or group acting in concert) holds a larger interest in the target;
- the acquirer does not control the (simple) majority of votes at general meetings;
- the target's articles provide for 30% (or lower) limitation on voting rights.

— The acquirer of a controlling interest is **exempted** if **no change of control in economic terms** has occurred (e.g. intra-group transfers of controlling interest).
— The acquirer of a controlling interest is **exempted** from the offer requirement but must make a **filing** with the Takeover Commission, if:
- shares are acquired for purposes of reorganisation of a troubled target or as collateral (the Takeover Commission may prescribe an offer in such cases);
- the control threshold is only exceeded temporarily;
- shares are acquired by way of gratuitous transfer among certain relatives;
- shares are transferred to an entity in which only shareholders of the transferor or their relatives are shareholders;
- squeeze-out is effected within five months from acquisition of control.

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as **jointly seeking or exercising control of the target** or cooperating with the target to prevent takeover.
— **Shareholdings** of parties acting in concert are **aggregated.**
— All **parties acting in concert** with the acquirer of control are **jointly and severally liable** for the offer price.
— A **presumption** of acting in concert applies *inter alia* to **arrangements/agreements** regarding the **election of supervisory board members.**
— The Austrian Takeover Commission will closely scrutinise any contacts between major shareholders (if their aggregate shareholding exceeds 30%) relating to supervisory board appointments and removals and other sensitive areas that it could consider as "control seeking".

4. What actions amount to "creeping-in", and what are their consequences?

— Acquisition of an additional 2% of voting rights by a controlling but not majority shareholder over any 12-month period will trigger a mandatory offer requirement.
— General exemptions from the offer requirement apply.

5. How long does it take to complete a mandatory offer?

— The takeover process from the preparation of the offer documents until the end of the offer period will require at least three months. Statutory

conditions (especially merger control proceedings and state aid notifications) may further delay the process.
- Principal stages of the offer process:
  1) Filing of offer documents with the Takeover Commission within 20 trading days after obligation to launch a mandatory offer is triggered; for voluntary offers: filing of offer documents with the Takeover Commission within 10 trading days after announcement of the bidder's intention to launch an offer (extension to 40 trading days can be requested).
  2) Publication of offer documents within 12–15 trading days from filing (subject to postponement by the Takeover Commission).
  3) Offer period of 2–10 calendar weeks after publication of the offer documents.
  4) Announcement of the result of the offer; settlement of the offer price.
  5) Three-month sell-out period.

6. What are the factors impacting the minimum price of an offer?

- The (minimum) price is the higher of a) the **average** volume-weighted **share price** of the target's shares during the **six-month** period **preceding announcement** of the bidder's intent to launch an offer, and b) the **maximum consideration** paid by the bidder (or parties acting in concert with the bidder) for target shares in past transactions during a **one-year** period preceding filing of the offer documents.
- Transactions of the bidder (or parties acting in concert) within nine months after the end of acceptance period and for consideration in excess of the offer price will lead to an increase in the offer price.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price (an increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

- Terms of an offer may only be improved (improvement also applies retroactively to acceptances).
- Modification of an offer is not permissible, if ruled out by the bidder in the original offer documents (unless in the context of a competing bid or if approved by the Takeover Commission).

9. Is the bidder entitled to withdraw the offer?

- Only voluntary offers may be withdrawn.
- A withdrawal right has to be specified in the offer documents.
- Occurrence of a withdrawal event may not be within the bidder's discretion.

10. May a mandatory offer be submitted in the form of a share/paper offer?

A non-cash offer is **only** permissible **as an alternative** bid to a (mandatory) cash offer.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- A decision of the bidder's supervisory and management boards (or equivalent corporate bodies) to make an offer;
- circumstances which give rise to an offer obligation (acquisition of control); or
- untoward price movements in target securities or rumours and speculation concerning an impending offer caused by the bidder's plans or intentions to launch an offer.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- The target's management is under a general obligation to keep sensitive information confidential.
- The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.
- Prior to announcement of the bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

- There is no established case law relating to deal protection measures.

- Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations (but may trigger a requirement to disclose the bidder's intention to launch a bid).
- Irrevocable undertakings of shareholders generally are permissible, but may establish "acting in concert".
- Break fees payable by the target are likely to be unenforceable.
- Protective undertakings in favour of a particular bidder are only permissible if they are in the best interest of the target (board neutrality rule).

14. What provisions exist relating to board neutrality?

- The Takeover Directive board neutrality rule has been implemented.
- There is no reciprocity exception for bidders from EU Member States which have not implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

- Mandatory offers may be subject to statutory conditions (e.g. merger clearance; regulatory approvals) only.
- Voluntary offers may contain other "objectively justified" conditions unless their fulfilment is highly unlikely.
- Minimum acceptance conditions, MAC clauses relating to the target, financial covenants and non-insolvency clauses are frequently used with voluntary offers.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- The bidder may not acquire target shares on terms more favourable than the offer terms unless the offer is improved simultaneously (possible exception: ordinary trading activities of credit institutions).
- Parallel acquisitions of shares are frequently used in voluntary control-seeking offers (parallel transactions can improve deal protection and may be credited towards the statutory 50% minimum acceptance condition).

17. When and in what form does the financing of the offer have to be secured?

- The bidder must ensure that, prior to launching the offer, financing for the entire cash bid (assuming full acceptance of the offer) is in place by way of a) free cash, b) open credit lines or c) a firm financing commitment from a financial institution.
- For a paper offer, the bidder must ensure that a sufficient number of own shares are available or can be issued by way of a capital increase or the authorised capital.
- Availability of financing (as of the settlement/closing date) must be confirmed by the bidder's expert.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder and the target are each required to appoint an independent expert for the entire duration of the takeover proceedings.
- Experts have to be selected from among a) auditors *("Wirtschaftsprüfer")* or auditing firms with certain minimum insurance cover, or b) credit institutions (including investment banks) subject to a minimum equity requirement.
- In practice, an expert is usually appointed from among the "Big Four" accountancy firms, even where a major investment banks act as financial advisers.
- The bidder's expert is responsible for the completeness and legal compliance of the offer documents, particularly as regards the offer price and the availability of financing.

19. What are the regulatory fees for takeover proceedings?

- EUR 60,000 minimum fees for the Takeover Commission;
- the fees for the Takeover Commission will depend on the aggregate consideration (progressive scale ranging from 0.2% down to 0.04% of the aggregate consideration).

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of voting rights of the bidder (and parties acting in concert) until a mandatory offer is made.

- Administrative fines ranging from EUR 5,000 to EUR 50,000;
- possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

90% of the voting share capital and 90% of the target company's voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A Squeeze-out after a successful bid is facilitated if a) a squeeze-out resolution is adopted within three months after the end of the offer period; and b) the bidder has acquired 90% or more of the affected shares through or in connection with the bid.
A rebuttable legal presumption of adequacy of the offer price per share in the context of squeeze-out applies (consideration below the offer price is considered inadequate).

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Adequacy of the consideration (squeeze-out price) must be reviewed by an auditor.
- The management board and the bidder must jointly adopt a squeeze-out report.
- Settlement of the squeeze-out price must take place within two months after registration of the squeeze-out.
- The squeeze-out price must be kept in escrow prior to the squeeze-out resolution being passed (alternatively, a bank guarantee must be deposited).
- Interest (currently 2.38% p.a.) is payable once the squeeze-out resolution has been adopted.

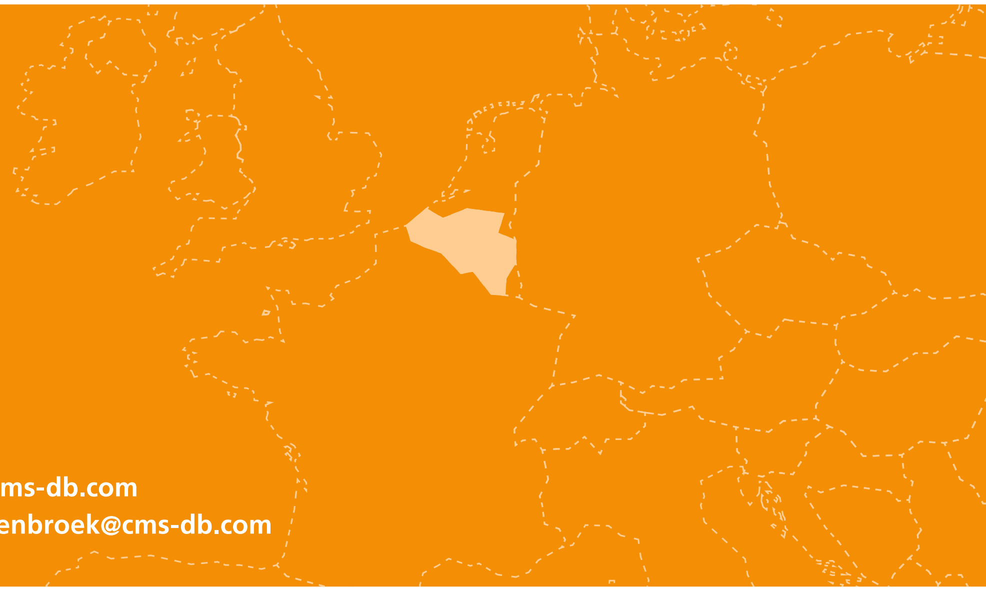
24. Under what circumstances are the shareholders of the target entitled to a sell-out?

After publication of the results of a) a mandatory offer, b) a voluntary squeeze-out offer (i.e. a voluntary offer where the bidder has obtained more than 90% of the voting share capital), or c) a voluntary offer containing a minimum acceptance condition that has been fulfilled, shareholders of the target which have not yet accepted the offer may sell their shares to the bidder under the terms of the offer within an additional three-month sell-out period.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Belgium



Carl Leermakers, carl.leermakers@cms-db.com
Nicolas Vandenbroek, nicolas.vandenbroek@cms-db.com

1. What transactions/actions generally trigger a mandatory offer?

— Direct or indirect control through **acquisition of more than 30%** of securities with voting rights;
— **acting in concert** by parties with an aggregate shareholding of more than 30% of securities with voting rights;
— **creeping-in** (alone or in concert) will trigger a mandatory offer once the 30% threshold is reached.

2. What are the principal exemptions from the mandatory offer requirement?

Acquirer of a controlling interest is **exempted** from the mandatory offer requirement *inter alia:*
— if the acquisition results from a voluntary takeover bid;
— if the acquisition results from a capital increase with preferential subscription rights approved by the general meeting of shareholders;
— if the acquisition results from a merger (subject to certain conditions);
— in case of transfers between affiliated companies;
— if another shareholder (or group acting in concert) controls the target company;
— if the acquisition results from the exercise of a pledge or a hard underwriting commitment, provided that a) the excess shares are transferred within one year, and b) the voting rights to such shares are not exercised in the meantime;
— if the 30% threshold is exceeded by 2% or less, provided that a) the excess shares are transferred within one year, and b) the voting rights to such shares are not exercised in the meantime.

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as a) **jointly seeking or exercising control of the target** or cooperating to prevent a takeover, or b) **agreeing on the exercise of voting rights** to implement a joint policy in respect of the target.
— **Shareholdings** of parties acting in concert are **aggregated.**
— All **parties acting in concert** with the acquirer of control are **jointly and severally held** to make a mandatory offer, unless the 30% threshold is met by only one of the parties acting in concert.
— A **presumption** of acting in concert applies to **affiliated companies.**

4. What actions amount to "creeping-in", and what are their consequences?

— Any acquisition of additional shares after the 30% threshold is reached (subject to the 2% "margin" exemption) will trigger a mandatory offer requirement.
— General exemptions from the offer requirement apply.

5. How long does it take to complete a mandatory offer?

— The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
— Principal stages of the offer process:
  1) Notification of the offer the documents to the Banking, Finance and Insurance Commission (CBFA), public announcement of the main

terms of the bid by the CBFA (the next working day) and CBFA approval of the offer documents (within 10 working days).

2) Publication of the offer documents (15 working days after notification) and opening of the bid.
3) Offer period of 2–10 calendar weeks after publication of the offer documents.
4) Announcement of the result of the offer; settlement of the offer price.
5) Three-month sell-out period.

6. What are the factors impacting the minimum price of an offer?

— The (minimum) price is the higher of a) the **average** volume-weighted **share price** of the target's shares during the **30 calendar days** preceding the event triggering the obligation to launch a mandatory offer, and b) the **maximum consideration** paid by the bidder (or parties acting in concert) for target shares in past transactions during the **one-year** period preceding filing of the offer documents.
— In addition, the CBFA can impose adjustments or additional conditions if the price calculated as above is deemed inappropriate.
— Transactions of the bidder (or persons acting in concert) within one year after the end of the offer period and for a consideration in excess of the offer price will lead to an increase in the offer price.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price (an increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

Terms of an offer may only be improved (improvement also applies retroactively to acceptances).

9. Is the bidder entitled to withdraw the offer?

— Mandatory offers may not be withdrawn.
— Voluntary offers may be withdrawn in certain circumstances (launch of a competing bid, defensive measures by the target, e.g. issuance of new securities or sale of assets), subject to CBFA approval.

10. May a mandatory offer be submitted in the form of a share/paper offer?

Yes, consideration can be **cash, securities or a combination thereof.**

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— The offer must be kept secret by all parties until the CBFA announces it (one working day after notification of the offer documents to the CBFA); the offer must be publicly launched 15 working days later.
— Circumstances which give rise to an offer obligation (acquisition of control); or
— untoward price movements in target securities or rumours and speculation concerning an impending offer caused by the bidder's plans or intentions to launch an offer. In that event, the CBFA may ask the bidder to "put up or shut up" and request that the target makes an announcement. Otherwise, the secrecy obligation of the target prevails until it is notified of the decision by the bidder's competent corporate body to make an offer.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to keep sensitive information confidential.
— The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest and compatible with insider trading rules (receiving such information may prevent the bidder from buying or selling securities until the bid is launched).
— The same information is to be provided by the target to possible competing bidders.
— Prior to announcement of the bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

— There is no established case law relating to deal protection measures.

- Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations (but may trigger a requirement to disclose the bidder's intention to launch a bid).
- Irrevocable undertakings of shareholders to accept the offer generally are permissible, but may establish "acting in concert".
- Break fees payable by the target are difficult but not impossible; the target must ascertain that agreeing to such break fees is in its interest.
- Protective undertakings in favour of a particular bidder are only permissible if they are in the best interest of the target; however, Takeover Directive board neutrality rules only apply if the target has accepted them.

14. What provisions exist relating to board neutrality?

- If shareholders of target have opted in to the prohibitions on frustrating actions and/or the breakthrough rule (to limit the possibility of defensive actions) then Takeover Directive board neutrality rule will apply.
- Target can opt in to reciprocity exception for bidders from EU Member States not having implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

- Mandatory offers must be unconditional. It is unclear whether a mandatory offer can be conditional upon obtaining competition or other regulatory clearance, but the CBFA will generally agree that the acceptance period starts only after a decision by the competition authorities.
- Voluntary offers may contain "objectively justified" conditions unless their fulfilment is highly unlikely (CBFA scrutiny).
- Minimum acceptance conditions, MAC clauses relating to the target, and competition clearance (Phase I) are most frequently used.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- No prohibition before the offer is announced (subject to insider trading restrictions, especially if the bidder is carrying out a due diligence).
- The bidder may not acquire target shares on terms more favourable than the offer terms, unless the offer is improved simultaneously (exception: ordinary trading activities of credit institutions).

17. When and in what form does the financing of the offer have to be secured?

- The bidder must evidence via a bank certificate ("certain funds") that, prior to launching the offer, the full amount of the bid price is available to the bidder, either in a bank account or through a credit facility.
- For a securities exchange, the bidder must evidence that a sufficient number of the securities to be offered are available to the bidder (or that the bidder has the power to issue or acquire such securities).

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder is required to appoint an independent expert to comment on the offer price only if the bidder already controls the target before the offer is launched.
- The bidder must appoint a financial institution or stockbroking company as paying agent (responsible for receiving the acceptances from the target shareholders and paying the offer price to them).
- It is market practice, although not a legal obligation, for the bidder to request the opinion of an investment bank on the offer price. If bidder has done this, the offer documents must disclose this information.
- The CBFA may require a fairness opinion.
- It is market practice, although not a legal obligation, for the target to request the opinion of an investment bank on the offer price (as the target must give the CBFA and the bidder its views on the offer).

19. What are the regulatory fees for takeover proceedings?

(Limited) regulatory fees are payable to the CBFA.

20. What are the legal consequences of a failure to make a mandatory offer?

- The CBFA can order appropriate measures, including suspension of voting rights of the bidder (and parties acting in concert) until a mandatory offer is made.

- The CBFA can impose a maximum daily fine of EUR 50,000 if its injunctions or orders are not adhered to by the bidder (with a maximum of EUR 2,500,000 per injunction or order).
- Possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

95% of the voting share capital and 95% of the voting securities (voting capital shares and voting beneficiary shares).

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A simplified squeeze-out after a successful bid is possible if a) the bidder indicated in the offer documents that it reserved such a right; b) at the close of the offer, the bidder holds at least 95% of the voting securities; c) the bidder has acquired 90% or more of the shares which were available through or in connection with the bid; and d) a squeeze-out resolution is adopted within three months after the end of the offer period.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- A squeeze-out can be effected by a 95% shareholder at any time, outside of the conditions for a simplified squeeze-out. The procedure is similar but with certain additional constraints:
  - an independent expert must provide a fairness opinion on the consideration (squeeze-out price);
  - the offer can only be made in cash.
- Shares not presented by the minority shareholders in the framework of a squeeze-out are presumed to have been transferred to the bidder.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- If, following the offer, the bidder holds at least 90% of the voting securities, it must (within ten working days of the announcement of the results of the offer, and for a period between five and fifteen working days) re-open the offer to allow all remaining shareholders to sell their remaining shares on the same terms as those of the offer.
- Furthermore, if following the offer (or its re-opening) the bidder holds more than 95% of the voting securities (and acquired 90% of the available shares in the offer or during its re-opening), shareholders which have not yet accepted the offer may sell their shares to the bidder under the terms of the offer within an additional sell-out period of three months.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements are to be observed.

Bosnia and Herzegovina

Nedžida Salihović-Whalen, nedzida.salihovic-whalen@cms-rrh.com
Sanja Voloder, sanja.voloder@cms-rrh.com

1. What transactions/actions generally trigger a mandatory offer?

Republika Srpska **("RS")**

- Acquisition directly or indirectly (by acting in concert) of shares which (together with an existing shareholding) confer more than 25% of the voting rights.
- Further acquisition (direct or indirectly) of shares after a takeover offer during which less than 75% of the voting rights were acquired.
- Further acquisition of shares after a takeover offer during which 75% or more of the voting rights were acquired but subsequently sold, reducing the holding to below 75%.

Federation of Bosnia and Herzegovina **("FBiH")**

- Acquisition of shares which (together with an existing shareholding), confer more than 30% of voting rights.
- Further acquisition of shares after a takeover offer during which less than 2/3 of the voting rights were acquired.
- Further acquisition of shares by a person that had acquired more than 30% of the voting rights during a privatisation process.

Brčko District of Bosnia and Herzegovina **("BD")**

- Acquisition of shares which (together with an existing shareholding), exceed 1/3 of the total number of voting rights.
- Further acquisition of shares after a takeover offer during which less than 2/3 of the voting rights were acquired.
- After initially acquiring shares in the procedure of capital increase during a privatisation process, any further acquisition of shares from the same issuer.

2. What are the principal exemptions from the mandatory offer requirement?

Republika Srpska

- Acquisition of shares through inheritance;
- acquisition of shares through the division of marital property;
- acquisition of shares by gratuitous transfer between close relatives;
- acquisition of shares through a capital increase if the general meeting of the company approves that an acquirer receives voting rights without the obligation to make a takeover offer;
- acquisition of shares through the procedure of issuance if this does not increase the percentage of the total number of votes conferred by the voting shares;
- acquisition of shares during bankruptcy proceedings;
- acquisition of shares given as collateral provided that the shares are sold within one year after acquisition;
- acquisition of shares during a merger;
- acquisition of shares through a change in the legal form of a company;
- acquisition of shares through the procedure of ownership transformation (privatisation) if the acquirer had not previously acquired shares through the stock market or block transactions;
- acquisition of shares between parties acting in concert provided that the total voting rights of these parties do not change;
- acquisition of shares by a broker on the basis of a brokerage, market making or underwriting agreement, provided that the shares are sold within one year.

Federation of Bosnia and Herzegovina

- Acquisition of the shares of a company with 40 or fewer than 40 shareholders;

- acquisition of shares through inheritance;
- acquisition of shares through the division of marital property;
- acquisition of shares via subscription of shares in a capital increase by way of public offering;
- acquisition of shares through a capital increase if the general meeting of the company approves that an acquirer receives more than 30% of the voting rights without the obligation to make a takeover offer;
- transfer of shares to an unrelated person within 30 days after the date of acquisition;
- acquisition of shares during bankruptcy proceedings;
- acquisition through the procedure of joining or mergers;
- intra-group transfers.

Brčko District of Bosnia and Herzegovina

- Acquisition of shares through inheritance;
- acquisition of shares through the division of marital property;
- acquisition of shares through a capital increase if the general meeting of the company approves that an acquirer receives over 1/3 of the total number of voting shares without the obligation to make a takeover offer;
- acquisition of shares during bankruptcy proceedings;
- acquisition through the procedure of joining or mergers;
- acquisition of shares through the change of the form of organisation of the company;
- transfer of shares between legal persons that are directly or indirectly composed of same shareholders or are transferred for the purpose of restructuring within the same parent company.

3. What actions amount to “acting in concert” and what are their consequences?

Whenever an obligation for the publication of a takeover offer arises, every person acting in concert has an obligation to publish a takeover offer. However, this obligation is met if any of the parties acting in concert fulfil this obligation.

The following actions amount to “acting in concert”:

Republika Srpska

- If natural or legal persons cooperate on the basis of an agreement (oral or written) to a) acquire shares, b) exercise voting rights, or c) hold shares as an agent.
- If one person directly or indirectly controls another person. Control is defined as directly or indirectly holding 25% or more of the voting rights or shares and having a right to influence the management of the company on the basis of an agreement.
- If a natural person is a member of the management or supervisory board of a company, or if he is employed, professionally engaged or otherwise has access to confidential information concerning a company.
- If natural and legal persons are under the control of a third party or under the control of the members of the same group.
- Legal persons act in concert if the same natural or legal persons hold 25% or more of the voting stock or the shares in the equity of those legal persons.
- Spouses and relatives in direct line or second degree relatives;
- natural persons are acting in concert with a legal person if they are in a relationship as described in the previous point with a natural person that holds 50% or more voting rights or shares in that legal person.

Federation of Bosnia and Herzegovina

- Spouses or relatives in direct line or first degree relatives;
- persons directly or indirectly controlling other person(s);
- persons under the control of a third person or under the control of the members of the same group;
- persons that enter into an agreement to act jointly relating to the target;
- persons that enter into an agreement to act jointly relating to the exercise of voting rights of the target;
- persons making an organised collection of authorisations for representation at the shareholders’ meeting with the goal of representing more than 30% of the voting rights at the shareholders’ meeting;
- persons acting on behalf of another person or holding shares as agent (exception: professional intermediaries).

Brčko District of Bosnia and Herzegovina

- If natural or legal persons cooperate on the basis of an agreement to a) acquire shares, b) exercise voting rights, or c) hold shares as an agent.

— Persons directly or indirectly controlling other person(s);
— if a natural person is a member of the management or supervisory board of a company, or if he/she is employed, professionally engaged or otherwise has access to confidential information concerning a company.
— Companies that are mutually connected within the meaning of the Law on companies of BD;
— spouses or relatives in direct line or first degree relatives.

4. What actions amount to "creeping-in", and what are their consequences?

See above.

5. How long does it take to complete a mandatory offer?

— The takeover process from the preparation of the offer documents until the end of the offer period may take several months. Statutory conditions (especially merger control proceedings) may further delay the process.
— Principal stages of the offer process:
  1) Filing a request with the Securities Commission for approval of the publication of the offer within 30 days after the day the obligation to launch an offer originated.
  2) The Commission makes a decision on the request within 30 days.
  3) Publication of the offer within 7 days (5 days in FBiH).
  4) Offer period of 30 days (from 30 to 60 days in FBiH).
  5) Up to 10 days (up to 7 days in FBiH) for settlement of the offer.
  6) Within 7 days after the settlement: publication of the result of the offer.
  7) Three-month sell-out period (no sell-out period in FBiH).

6. What are the factors impacting the minimum price of an offer?

The offer price cannot be lower than a) the highest price paid by the bidder or persons acting in concert during a period of one year (6 months in FBiH) preceding the day of the offer obligation and b) the average price on the stock market or other regulated public market in the 6-month period preceding the day of the offer obligation.

7. May the bidder modify the offer price?

The bidder may only increase the offer price (an increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

Modification of an offer may only relate to an increase in the offer price or extension of the offer period if there are competing offers.

9. Is the bidder entitled to withdraw the offer?

— In RS and BD, the published takeover offer may only be withdrawn in the case of a competing offer (in BD if the competing offer is higher) or in the case of bankruptcy of the target.
— In FBiH, the published takeover offer may only be withdrawn in the case of a competing offer or if circumstances arise that make fulfilment of the bidder's obligations so difficult that completion of the offer would bear no relation to the bidder's expectations and it would be unjust to keep the offer valid.

10. May a mandatory offer be submitted in the form of a share/paper offer?

No.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

The obligation of informing the general public (the stock market and the Commission) arises when a mandatory offer is triggered (law in FBiH does not expressly include general public).

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.

13. What deal protection measures may a bidder implement?

There is no established case law relating to deal protection measures.

14. What provisions exist relating to board neutrality?

The target's management must act in the target's best interest and must not influence the outcome of the offer. In RS and BD, the management must publish a reasoned opinion on the offer within 7 days after the publication of the offer. In FBiH, such publication is not obligatory (if such an opinion is published, however, it should particularly relate to the offer price).

15. What conditions are permissible for mandatory offers?

The bidder may not make his offer conditional except in following circumstances:

- acquisition of encumbered shares;
- with regard to stock that will be escrowed for the acceptance of the takeover offer, if the total number of votes it confers, together with the number of votes that the offeror or persons acting in concert already hold, does not exceed 50% of voting stock (or additionally, in FBiH, if acquired stock does not exceed 2/3 of the voting stock of the total amount of stock issued by the issuer).

16. May the bidder acquire shares outside the offer (in parallel transactions)?

From the moment the obligation for the publication of an offer arises until the end of the settlement period, the bidder (and persons acting in concert) may not acquire shares outside the offer.

17. When and in what form does the financing of the offer have to be secured?

Before submitting the request for approval of the offer documents, the bidder must secure the financing required for the payment of all shares for which an offer is made by a) allocating funds in a designated bank account, b) concluding a loan agreement with a bank, or c) submitting an irrevocable bank guarantee with the shareholders accepting the offer as beneficiaries (in FBiH, such a guarantee may be secured by a legal person other than a bank if it is accepted by a depository of the shares).

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

No.

19. What are the regulatory fees for takeover proceedings?

- In FBiH, 0.1% of the total nominal value of the securities for which the offer was made, but not less than BAM 3,000 (approximately EUR 1,500) or more than BAM 10,000 (EUR 5,000) for the fees regarding the approval of the offer by the Commission.
- In RS, 0.8% of the amount of the offer, but at least BAM 1,000 (approximately EUR 500) for the fees regarding the approval of the offer by the Commission.
- In BD, 0.1% of the total nominal value of the securities for which the offer was made but not less than BAM 1,000 (approximately EUR 500) or more than BAM 10,000 (EUR 5,000).

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of the voting rights of the bidder (and parties acting in concert) until a mandatory offer is made.
- In RS, monetary fines range from BAM 2,000 to BAM 6,000 (approximately EUR 1,000 to EUR 3,000) for natural persons and BAM 10,000 to BAM 30,000 (approximately EUR 5,000 to EUR 15,000) for legal persons.
- In FBiH, monetary fines range from BAM 2,000 to BAM 5,000 (approximately EUR 1,000 to EUR 2,500) for responsible natural persons and BAM 50,000 to BAM 70,000 (approximately EUR 25,000 to EUR 35,000) for legal persons.
- In BD, monetary fines range from BAM 500 to BAM 1,500 (approximately EUR 250 to EUR 750) for natural persons and BAM 5,000 to BAM 17,000 (approximately EUR 2,500 to EUR 8,500) for legal persons.

21. What shareholding is generally required for a squeeze-out?

- In FBiH and BD, there is no regulation of squeeze-outs.
- In RS, shares conferring more than 95% of the voting rights are required.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

In RS, the central register will conduct the transfer of the remaining shares that were not submitted to the bidder if a) the total number of voting rights of the bidder and parties acting in concert exceeds 95%; b) the bidder had stated in the offer documents that a squeeze-out would be carried out; c) the consideration required for payment of the outstanding shares has been transferred to the designated account.

23. What other legal requirements need to be observed in the context of a squeeze-out?

No other particular requirements are to be observed.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- In FBiH and BD, there are no provisions concerning sell-outs.
- In RS, the central register will conduct the transfer of the remaining shares that were not submitted to the bidder if a) the bidder and parties acting in concert have acquired 95% of the voting rights; b) the sell-out request of the minority shareholders was made within 90 days after the end of the offer period. If the bidder has acquired shares for a higher price than the offer price prior to the date of submission of the sell-out request, that price must also be paid to the minority shareholders.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements are to be observed.

Bulgaria

Gentscho Pavlov, gentscho.pavlov@cms-rrh.com
Atanas Bangachev, atanas.bangachev@cms-cmck.com
Valentin Savov, valentin.savov@cms-rrh.com
Teodora Ivanova, teodora.ivanova@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

— **Acquisition of more than 50%** (or **two-thirds** respectively) of the voting rights. "Acquisition" includes: a) direct acquisition; b) acquisition through related parties; c) acquisition by persons acting in concert who jointly hold more than 50% (2/3); or d) acquisition by third parties who hold voting shares on behalf of the acquirer and whose voting rights amount to more than 50% (2/3) of the voting rights at the company's general meeting.

— **Creeping-in.**

2. What are the principal exemptions from the mandatory offer requirement?

— The acquirer of a controlling interest is **exempted** if **no change of control in economic terms** has occurred (e.g. intra-group transfers of controlling interest): not explicitly regulated but generally accepted.

— The acquirer of a controlling interest is **exempted** from the offer requirement if the control threshold is only exceeded **temporarily** (within the 14-day period for filing of the offer, all shares in excess of the relevant threshold have to be sold).

— The acquirer is **exempted** if the relevant thresholds are exceeded as a result of a **privatisation** transaction (unless transaction is concluded on a regulated market).

— The acquirer is **exempted** from launching a mandatory offer at the **2/3 threshold** if he:
- already holds 50% of the voting rights and has exceeded the 2/3 threshold as a result of a **capital increase;**
- has exceeded the 2/3 threshold within **a year after launching the mandatory offer** at the 50% threshold;
- has exceeded the 2/3 threshold within **a year after launching an offer for acquisition of more than 1/3 of the company's voting rights,** provided that the offer was addressed to all shareholders at a price calculated in accordance with the rules for a mandatory offer and as a result of the offer the bidder exceeded the 50% threshold.

— The acquirer **only has to launch one offer** if he:
- has acquired 50% and within 14 days has acquired additional shares exceeding the 2/3 threshold;
- has acquired shares exceeding the 2/3 threshold in one single step;
- has acquired 50% (2/3) and within 14 days has acquired additional shares exceeding the 90% threshold for launching a voluntary offer.

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as holding of more than 50% (2/3) of the voting shares of the company by persons who have entered into an agreement for **joint policy in the company's management through jointly exercising their voting rights.**

— **Shareholdings** of parties acting in concert are **aggregated.**

— Among parties acting in concert, **the bidder is the person with the largest shareholding.**

4. What actions amount to "creeping-in", and what are their consequences?

— Additional acquisition of more than **3%** of voting rights by a shareholder who holds more than 50% of the voting rights in the company over any 12-month period will trigger a mandatory offer requirement. An exception is envisaged for cases

where a mandatory offer or an offer for acquisition of more than 1/3 of the company's voting rights has been launched within the preceding year and, as a result, the bidder has acquired more than 50% of the company's voting rights.
- A person who holds at least 5% of the voting rights and wishes to acquire more than 1/3 of the voting rights, must launch an offer to all shareholders holding voting rights after approval of the offer documents by the FSC (Bulgarian Financial Commission – the competent regulatory body).

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process
- Principal stages of the offer process:
  1) Filing of offer documents with the FSC within 14 days of the acquisition of the shares which trigger the offer requirement.
  2) Publication of offer documents can take from approximately 17 business days to approximately 2 months from filing (subject to FSC request for additional information/ amendments to the offer).
  3) Offer period of 28 to 70 days after publication of offer documents.
  4) Announcement of the result of the offer: within 3 days after expiry of the offer period.
  5) Settlement of the offer price: within 7 business days after completion of the transaction.
  6) Three month sell-out period.

6. What are the factors impacting the minimum price of an offer?

- The minimum price (or the rate of exchange offered for the shares) may not be lower than the highest of the following: a) **fair** price specified in the price justification; b) **average** weighted market price paid within the **three preceding months;** and c) **maximum consideration** per share paid by the bidder within the **six months** preceding the offer registration; if the price cannot be determined by this method, it is determined as the last issue value or the last price paid by the bidder, whichever is higher.
- Transactions of the bidder (directly or indirectly or by parties acting in concert) during the offer period at a price higher than the offer price will lead to an increase in the offer price.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price (an increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

Terms of an offer may only be improved (improvement also applies retroactively to acceptances).

9. Is the bidder entitled to withdraw the offer?

- Only offers by a person who holds at least 5% of the voting rights and wishes to acquire more than 1/3 of the voting rights may be withdrawn by the bidder.
- Other offers may be withdrawn only if a) the offer cannot be completed due to circumstances beyond the bidder's influence; b) the period for its acceptance has not expired; and c) the FSC has approved the withdrawal. If the bidder was obliged to launch an offer (which was subsequently withdrawn), he may not exercise his voting rights until launching a new offer.

10. May a mandatory offer be submitted in the form of a share/paper offer?

Yes, in the case of mandatory offers and in cases where a person who holds at least 5% of the voting rights and wishes to acquire more than 1/3 of the voting rights, the consideration may be in **shares issued by the bidder** for the purposes of the offer. No such possibility (share/paper offer) is envisaged for the voluntary offer (possibility for launching an offer by a shareholder holding at least 90% of the voting rights).

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- Not explicitly regulated.
- The general rules regarding insider information apply: normally, definitive agreement on the purchase, signing of the SPA, etc., must be announced.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- Not explicitly regulated.
- Normally, potential majority package acquisition would allow a due diligence. The general rules regarding insider information apply.

13. What deal protection measures may a bidder implement?

Not explicitly regulated.

14. What provisions exist relating to board neutrality?

- The Takeover Directive board neutrality rule has been implemented.
- Upon receipt of the offer, the management body may not undertake any actions resulting in additional expenses for the bidder, decrease of the assets of the target company or generally in frustration of the acceptance of the offer, unless the general meeting has approved such actions in advance.
- The management body of the target is not prevented from seeking competing bidders.

15. What conditions are permissible for mandatory offers?

- Mandatory offers may be subject to statutory conditions only (e.g. merger clearance; Bulgarian National Bank approvals, etc.).
- An offer for acquisition of 1/3 of the voting rights in a company may be conditional upon receipt of a sale offer for a minimum share package by the remaining shareholders.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- The bidder may acquire shares outside the offer (in parallel transactions).
- If the acquiring price outside the offer is higher than the offer price, the offer price must be increased accordingly.

17. When and in what form does the financing of the offer have to be secured?

- The bidder must submit to the FSC together with the offer sufficient evidence for availability of funds for financing the offer.
- Normally, bank statements or a bank guarantee are considered sufficient.
- The bidder must open a special bank account for payment of the shares subject to the offer.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder is required to appoint an independent expert (investment intermediary) for the preparation of the offer.
- The investment intermediary evaluates the offer price and prepares the offer.
- The investment intermediary submits the offer to the FSC and registers the share transfers.

19. What are the regulatory fees for takeover proceedings?

- Fee charged by the Bulgarian Stock Exchange: around 0.06% of the deal amount.
- Fee of the investment intermediary: negotiable.

20. What are the legal consequences of a failure to make a mandatory offer?

- Fines ranging between approximately EUR 2,500 and EUR 5,000;
- potential claims for damages by current or former shareholders of the target company;
- the bidder's voting rights are suspended until a mandatory offer is launched.

21. What shareholding is generally required for a squeeze-out?

95% of the voting rights in the general meeting, provided that such shareholding has been acquired as a result of an offer to all shareholders holding voting shares.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

There are no specific provisions.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Adequacy of the squeeze-out price;
- compliance of the offer with statutory requirements;
- accounts for depositing the price for the shares whose owners have not explicitly accepted the squeeze-out and which are deemed acquired by the bidder in the squeeze-out process;
- approval of the squeeze-out offer by the FSC.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- Any of the shareholders may demand that a bidder who has acquired directly, through related parties or indirectly at least 95% of the voting rights in the general meeting, should purchase its voting shares within three months from the expiration of the offer.
- The bidder must purchase the shares within 30 days from receipt of the demand.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Croatia

Gregor Famira, gregor.famira@cms-rrh.com

1. What transactions/actions generally trigger a mandatory offer?

— A party (together with parties acting in concert) obtains a **"controlling threshold"** in a target company, i.e. directly or indirectly controls over 25% of the voting rights of the target.
— A party (together with parties acting in concert) who has already obtained a controlling threshold acquires more than an additional 10% of the voting shares of the target **("additional threshold");** or
— a party (together with parties acting in concert) who has already obtained a controlling threshold acquires additional voting shares in the target and after such acquisition holds more than 75% of the voting shares of the target **("final threshold")**.

2. What are the principal exemptions from the mandatory offer requirement?

— The acquisition of a controlling interest is **exempted** from the mandatory offer requirement if the general meeting approves the takeover:
  - in the process of a capital increase with the issuing of new shares; or
  - shares are granted instead of dividend payments.

— Certain types of "passive acquisitions", including acquisitions of shares by inheritance or by division of marital assets, as a creditor in bankruptcy proceedings or through merger of two companies, where only one of the merging companies held target shares before the merger, are also exempted from the mandatory offer requirement.
— The acquisition of a controlling interest is **exempted** if **no change of control in economic terms** has occurred (such as intra-group or related party transfers, or transfers in reorganisation).
— Sale or transfer of shares of a credit institution acting as a fiduciary creditor are exempted, provided that the sale or transfer occurs within six months after the acquisition.
— The simultaneous acquisition of shares together with another person who has already launched a takeover bid, but in a percentage equal to, or smaller than, such other person is also exempted from the mandatory offer requirement.

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as an agreement to act in coordination with respect to a) the acquisition of shares, b) the voting of shares or c) preventing third persons from launching a takeover.
— A presumption of "acting in concert" exists, *inter alia*, where persons are connected by circumstances in which they acquire shares (e.g. timing and place of acquiring shares, value of acquired shares, etc.), where one person or entity directly or indirectly controls the other, or where corporate entities are considered as connected companies pursuant to applicable law.
— **Shareholdings** of parties acting in concert are **aggregated.**
— Each party acting in concert is obliged to announce an offer; if one of the parties acting in concert announces the offer, the others are released from their duty.
— All **parties acting in concert** with the acquirer of control are **jointly and severally liable** for the offer price and all other obligations under the Takeover Act.

4. What actions amount to "creeping-in", and what are their consequences?

- Acquisition of an additional 10% of voting rights above the controlling threshold (25%) or additional acquisition of less than 10% if the final threshold (75%) would be surpassed.
- Creeping-in triggers a mandatory offer requirement.
- General exemptions from the offer requirement apply.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months.
- Principal stages of the offer process:
  1) Filing of the offer documents with the Takeover Agency within 30 days after the thresholds are met.
  2) Publication of the offer documents within 7 days after they are approved by the Takeover Agency.
  3) Offer period of at least 28 days from the publication of an offer.
  4) Settlement of the offer price within 14 days from the end of the offer period.
  5) Announcement of the takeover within the following 7 days.
  6) Three-month sell-out period.

6. What are the factors impacting the minimum price of an offer?

- The price is the higher of:
  - the highest price paid by the bidder for shares of the target during the prior year; or
  - the average weighted closing prices of the target's shares during the last three months.
- If the bidder, or a person acting in concert, acquires shares of the target that were the subject of the takeover for a price higher than the offer price within one year after the end of the offer period, this will trigger the obligation to pay the difference, within 7 days from the acquisition of such additional shares, to all the shareholders who accepted the offer.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price; the increase must amount to at least 2%; (an increased offer price also applies retroactively).

8. Is the bidder entitled to modify other terms of the offer?

- The bidder may amend his bid only by:
  - increasing the price for the offered shares by at least 2%; or
  - offering a higher number of exchange shares (provision only applicable after Croatia's accession to the EU).
- Any modification of the offer will apply retroactively to all shareholders who have already accepted the initial offer.
- Requests for amendment of an offer should be submitted to the Takeover Agency at least 10 days prior to the end of the offer period.
- The Takeover Agency will issue its decision on the proposed modification within three days. If the Agency approves the proposed modification, the offer period is extended for a further seven days.

9. Is the bidder entitled to withdraw the offer?

- Withdrawal of the offer is only permissible in the case of a) a competing offer with a higher price or b) the target's bankruptcy.
- Withdrawal of the offer should be announced at least seven days prior to the end of the offer period, and the bidder has to inform the target, the depository, the Takeover Agency and the stock exchange or regulated public market about the withdrawal.

10. May a mandatory offer be submitted in the form of a share/paper offer?

- The purchase price must be paid in cash.
- Upon EU accession, non-cash offers will be permissible **as an alternative** to a mandatory cash offer.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- The Takeover Agency may request that any legal or natural person issue a sworn statement as to its intention with respect to the launch of a takeover bid in cases where the situation on the capital market indicates a possible takeover, e.g.:

- when circumstances indicate the existence of a takeover agreement;
- when the scope of trading and prices of shares of the target company have significantly changed; or
- when a legal or natural person expresses its intention to launch a takeover in any other way, e.g. it communicates such an intention to the public.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to act in the best interest of the company.

— The Takeover Act does not require the target to allow a due diligence to be conducted, but the target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.

13. What deal protection measures may a bidder implement?

There is no established case law relating to deal protection measures.

14. What provisions exist relating to board neutrality?

— Within ten days after publication of the bid, the management board of the target must issue an advisory opinion relating to:

- its view of the offer price;
- its view of the bidder's future intentions and goals in relation to the target;
- its view of the bidder's strategic plans in relation to the target and potential consequences of these plans for the target's employment policy, the employees' status, and potential change of business location;
- the intention of the management board members to accept or reject the offer; and
- the relationship between the bidder and the management board, and the terms and conditions of any agreements concluded with the bidder.

— Other than publishing the management board's opinion, the members of the management and supervisory boards are prohibited from undertaking any activity that could influence the offer.

— In particular, the management board cannot increase the share capital, undertake any decisions beyond ordinary business decisions, act in a way that could seriously affect the target's business, or acquire or sell treasury shares.

15. What conditions are permissible for mandatory offers?

— Mandatory offers may only be conditional upon the obligation to purchase only unencumbered shares.

— Voluntary offers may also be subject to a minimum acceptance condition.

— Offers cannot be conditional upon approval by the Croatian competition or other governmental authorities. All competition or other regulatory approvals must be obtained in advance and submitted with the offer documents to the Takeover Agency for approval.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

From the moment the obligation to announce the takeover bid arises until the end of the offer period, the bidder is prohibited from acquiring or selling, or undertaking to acquire or sell, voting shares in the target outside the offer.

17. When and in what form does the financing of the offer have to be secured?

Prior to launching the offer, the bidder must ensure that financing for the entire cash offer (assuming full acceptance) is in place by way of a) a cash deposit, b) a bank guarantee, or c) shares deposited with the depository exchange (for paper offers, as of Croatia's accession to the EU).

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

There is no such obligation in the Takeover Act but in the course of preparing and conducting the takeover process the bidder usually relies on the advice of its professional advisers.

19. What are the regulatory fees for takeover proceedings?

A fixed fee of EUR 150–200 plus 0.2% of the aggregate consideration is payable to the Takeover Commission.

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of voting rights of the bidder (and parties acting in concert) until a mandatory offer is made;
- a penalty ranging from approximately EUR 30,000 to EUR 150,000;
- possible damage claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

- 95% of the overall issued share capital of the target;
- treasury shares are not included in the calculation of the required share percentage.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Upon EU accession, a simplified squeeze-out will be possible:

- after a successful takeover bid in which the bidder has acquired 95% or more of the voting shares and during a 3-month period following the end of the offer period.
- The request must be submitted to the Central Depositary & Clearing Company (the **"CDCC"**). Consideration is adequate if it is equal to the offer price. The bidder must deposit the squeeze-out price in a special account with the CDCC or deposit a bank guarantee in the amount of the squeeze-out price.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Adequacy of consideration (squeeze-out price) – to be reviewed by an expert (auditor) appointed by the court and proposed by the majority shareholder.
- A squeeze-out takes effect only after registration in the court register.
- Prior to convocation of the shareholders' meeting, the majority shareholder must obtain a bank guarantee under which the bank is jointly and severally liable to the minority shareholders for payment of the remuneration for the relevant shares.
- If a minority shareholder disagrees with the amount of remuneration, the decision to squeeze-out cannot be challenged, but the minority shareholder may apply directly to the court to challenge the adequacy of the consideration offered.
- Interest on consideration is paid from the moment the squeeze-out has been registered.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- A sell-out will only be possible as of EU accession.
- The shareholders will be entitled to a sell-out during a period of 3 months after the end of the offer period, provided that the bidder has acquired at least 95% of the shares.
- The bidder must deposit the sell-out price in a special account with CDCC or deposit a bank guarantee in the amount of the sell-out price.
- The request must be submitted to the CDCC;
- adequate consideration will be the offer price.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Czech Republic

Helen Rodwell, helen.rodwell@cms-cmck.com
Robin Rathore, robin.rathore@cms-cmck.com
Patrik Przyhoda, patrik.przyhoda@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

— Direct or indirect control of the target through **acquisition of more than 30%** of the voting rights;
— **acting in concert** by parties with an aggregate shareholding of more than 30% of the voting rights in the target.

2. What are the principal exemptions from the mandatory offer requirement?

— The acquirer of a controlling interest **is exempted** from the mandatory offer requirement if he (together with parties acting in concert) **does not control the target;** typically if there is another shareholder who holds more voting rights in the target.
— The acquirer of a controlling interest **is also exempted** from the mandatory offer requirement if:
  - the acquirer inherits the shares from a person who has already made a mandatory offer;
  - the threshold is reached by reason of a merger or demerger, provided that the entities merging were already members of one business group prior to the merger;
  - the acquirer has already been a controlling entity of the target and has undertaken (in compliance with the Commercial Code), in an agreement on transfer of profit or in a control agreement, that it will buy the shares of other shareholders on their written request, provided that there is no time limit for submitting such requests;
  - the acquirer reaches the threshold by reason of a transaction carried out between members of the same business group;
  - the acquirer reaches the threshold on the basis of an unconditional and unlimited voluntary public offer; or
  - the acquirer does not reach the threshold on the basis of his own conduct and at the time of the acquisition he could not reasonably presume that he would reach the threshold. In this circumstance, the acquirer and persons acting in concert with him are not entitled to exercise their voting rights, unless the acquirer makes a mandatory offer within the statutory period or the Czech National Bank **("CNB")** decides (following a request from the acquirer) that he may exercise his voting rights.

— The acquirer of a controlling interest **may be exempted** from the mandatory offer requirement if he has only temporarily exceeded the threshold, i.e. he has already decreased his shareholding below the 30% threshold by transfer to an unrelated third party or will do so within 30 days after the acquisition. However, this exemption is subject to the consent of the CNB. The application for consent must contain the name and identification details of the party to which the shares have been or will be transferred, as well as an affidavit that such party is not a) a related party (a relationship may be constituted by persons or by assets), b) an entity controlled by or controlling the acquirer in any way, or c) an entity acting in concert with the acquirer. If this affidavit is incorrect, the CNB will not issue its consent. The CNB has wide powers of discretion in deciding whether or not to grant its consent.
— The acquirer of a controlling interest **may also be exempted** from the mandatory offer requirement if he exceeds the threshold:
  - in order to avert the insolvency of the target; or
  - in order to fulfil the legal duty to maintain capital adequacy; or

- in order to fulfil any other legal duty of the target.

— However, this exemption is subject to the consent of the CNB. The application for consent must be submitted prior to the acquisition, and the CNB has wide powers of discretion in deciding whether or not to grant its consent.

3. What actions amount to "acting in concert" and what are their consequences?

— A person acting in concert is any person or legal entity who, in mutual cooperation with the acquirer or other person(s), acts to acquire or enforce common influence (control) over the target's enterprise, in particular (but without limitation to) through coordinated exercise of voting rights. A controlling entity and its controlled entities that are part of the same business group, and entities that have entered into an agreement on voting in the target's shares, will always be regarded as persons acting in concert.

— Persons acting in concert are treated as if they are one acquirer for the purposes of achieving the 30% threshold. When the threshold is achieved by persons acting in concert, the duty to make a mandatory offer is fulfilled even if only one of the persons acting in concert makes a mandatory offer. However, the parties acting in concert will still be bound jointly and severally in respect of any agreements entered into on the basis of a mandatory offer.

4. What actions amount to "creeping-in", and what are their consequences?

— Buying shares without making a public offer is prohibited, except in transactions where a) the offer is made to fewer than 100 persons; b) the offer is for less than 1% of the shares in the company; or c) the offer is made on the regulated stock market.

— However, (unless otherwise prohibited by law) a company can stipulate in its articles of association that the aforementioned rule will not apply where the offer is for less than 5% of the shares in the company.

5. How long does it take to complete a mandatory offer?

— The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least six weeks. Statutory conditions (especially merger control proceedings) may further delay the process.

— Principal stages of the offer process:
1) Filing of the draft offer documents with the CNB within 15 days after the acquisition (extension up to 30 days may be requested).
2) Publication of the offer documents after receiving the consent of the CNB. Consent proceedings may take up to 15 days after filing of the offer documents. If the CNB does not grant or deny consent within 15 days after the filing, consent is deemed to be automatically granted.
3) Offer and acceptance period of at least 4 calendar weeks after publication of the offer documents.
4) Announcement of the result of the offer.

6. What are the factors impacting the minimum price of an offer?

— The minimum price is the highest consideration paid by the bidder or a person acting in concert with him for target shares within the 12 months prior to the triggering of a mandatory offer (the **"premium price"**). If the premium price cannot be determined (e.g. neither the bidder nor any person acting in concert with him bought any shares of the target in the 12-month period), the minimum price is the average volume-weighted share price of the target's shares during the period of 6 months prior to the triggering of the mandatory offer (the **"average price"**).

— If within 6 months after the end of the offer and acceptance period, the bidder (or parties acting in concert) purchase target shares for consideration higher than the offer price, this will lead to an increase in the offer price, unless a) the shares are purchased on a regulated market and all aspects of the transactions are negotiated via an automated trading system; b) the purchase is carried out in order to fulfil a duty set out by law; c) in the case of a squeeze-out; or d) in certain other specific cases.

— The CNB may unilaterally change the offer price if:
- the price was not agreed on a regulated market and the transaction was between related parties; or
- the amount of the premium price or of the average price was substantially affected by rate distortion, other disturbance or other extraordinary circumstances; or

- the amount of the average price was substantially affected as a result of extraordinary low liquidity of the share certificates; or
- there was a substantial change in the target's economic situation during the last 12 months.

— The CNB may, following a request from the bidder, decrease the price below the limits set out above if the bidder acquired the threshold in order to avert insolvency of the target.

7. May the bidder modify the offer price?

— In a mandatory offer, the bidder may **only increase** the offer price (an increased offer price also applies retroactively to acceptances that have already been made).

— In a voluntary offer, the bidder may decrease the offer price only if this possibility has been expressly stated in the offer documents; provided that such decrease is not contrary to the principles of the law and (objectively) is made only for justifiable reasons that are not solely within the discretion of the bidder and/or persons acting in concert.

8. Is the bidder entitled to modify other terms of the offer?

— Terms of a mandatory offer may only be improved (improvement also applies retroactively to acceptances).

— Terms of a voluntary offer may be improved (improvement also applies retroactively to acceptances). They may be made less favourable only if this possibility has been expressly stated in the offer documents, provided that such modification is not contrary to the principles of the law and (objectively) is made only for justifiable reasons that are not solely within the discretion of the bidder and/or persons acting in concert.

9. Is the bidder entitled to withdraw the offer?

Only voluntary offers may be withdrawn, provided that this possibility has been expressly stated in the offer documents and is not contrary to the principles of the law, and, (objectively) is made only for justifiable reasons that are not solely in the discretion of the bidder and/or persons acting in concert.

10. May a mandatory offer be submitted in the form of a share/paper offer?

A non-cash offer is permissible, but only with liquid papers traded on a regulated marked. Otherwise, consideration in the form of shares/papers is still permissible, but cash must also be offered **as an alternative.**

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— For a mandatory offer: reaching or exceeding the 30% threshold (individually or together with persons acting in concert) would trigger an obligation to make a public announcement.

— For a voluntary offer: a decision by the bidder's competent body to make an offer would trigger an obligation to make a public announcement.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to keep sensitive information confidential.

— The target's management may, however, negotiate with the bidder regarding the offer. This implies that it may permit due diligence by the bidder if it deems this to be in the target's best interest. This may be subject to the approval of the general meeting of the target.

— Prior to the announcement of the bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

— There is no established case law relating to deal protection measures.

— Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations (but may trigger a requirement to disclose the bidder's intention to launch a bid).

— Irrevocable undertakings of shareholders are, generally, permissible but will probably establish "acting in concert".

- Break fees payable by the target are likely to be unenforceable.

14. What provisions exist relating to board neutrality?

The Takeover Directive's board neutrality rule has been implemented.

15. What conditions are permissible for mandatory offers?

- Mandatory offers must be unconditional.
- Voluntary offers may only contain conditions whose fulfilment is not within the discretion of the bidder and/or persons acting in concert.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- No (with some very specific exemptions).
- If the bidder or person(s) acting in concert acquire any target shares outside the offer, they cannot exercise the rights connected with such shares (including voting rights) for a period of three years after acquisition of the shares. The CNB may impose a monetary fine of up to CZK 5,000,000 (approximately EUR 200,000) on the bidder and/or person(s) acting in concert for breaching this prohibition.
- If the purchase price for such shares was higher than the offer price, the offer price must also be increased, with retroactive effect.

17. When and in what form does the financing of the offer have to be secured?

The CNB may, at its own discretion, require the bidder to prove that he has enough funds for financing the offer and to establish the origin of such funds. If the bidder fails to prove sufficient funds, and/or their origin, the CNB may prohibit the launch of the offer.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- Bidders who have their registered office or residence in the Czech Republic are not required to appoint any advisers, but appointing a competent adviser (e.g. an attorney-at-law) is common and is strongly recommended.
- Bidders who have their registered office or residence outside the Czech Republic must appoint a representative – either an attorney-at-law or an entity entitled to provide investment services in the Czech Republic. This duty does not apply to bidders who have founded a branch *("organizační složka")* in the Czech Republic.

19. What are the regulatory fees for takeover proceedings?

- CZK 5,000 (approximately EUR 200) to the CNB for the proceedings related to the publication of the offer documents.
- Additional fees ranging from CZK 1,000 to CZK 3,000 (approximately EUR 40 to EUR 120) for proceedings on certain special decisions which are usually not required (e.g. extension of the period for filing or publication of the offer documents, extension of the offer and acceptance period, and granting various exceptions in favour of the bidder).

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of the rights of the bidder (and parties acting in concert) connected with the target shares held (including – without limitation – the voting rights) for three years; and
- a monetary fine of up to CZK 50,000,000 (approximately EUR 2,000,000), imposed by the CNB; and
- possible damages claims from current and former shareholders of the target.

21. What shareholding is generally required for a squeeze-out?

90% of the target's share capital and 90% of the voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A simplified squeeze-out (i.e. a squeeze-out without appointing an expert to evaluate the compensation paid to minority shareholders) is permitted if: a) the decision on the squeeze-out is adopted within three months after the end of an offer and acceptance period; and b) the bidder has acquired 90% or more of the target shares through, or in connection with, the bid. In that case, there is an irrefutable presumption that the offer price was adequate and no expert evaluation will be needed.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Unless the target shares are listed on a regulated market, the adequacy of consideration (the squeeze-out price) is to be reviewed by an expert (except for simplified squeeze-outs).
- The decision on the squeeze-out must be adopted by the general meeting of the target by at least 90% of votes. The decision must be made in the form of a notarial deed, supplemented by the evaluation of the expert.
- The squeeze-out price must be kept in escrow prior to the general meeting at which the resolution concerning the squeeze-out is passed.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

If the bidder, as a result of a mandatory offer or an unconditional and unlimited voluntary offer, acquires shares in the target representing at least 90% of the registered capital and voting rights, he must launch an additional offer to the remaining shareholders within 30 days after the closing of the original offer, for a consideration corresponding at least to the original offer. The offer and acceptance period for the additional offer is 90 days.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements are to be observed. However, if the bidder fails to make an additional offer, he will be subject to a monetary fine of up to CZK 50,000,000 (approximately EUR 2,000,000), imposed by the CNB, and possible claims for damages from the minority shareholders.

France

Jacques Isnard, jacques.isnard@cms-bfl.com
Bruno Zabala, bruno.zabala@cms-bfl.com
Alain Couret, alain.couret@cms-bfl.com

1. What transactions/actions generally trigger a mandatory offer?

— A natural or legal person, acting alone or in concert, **comes to hold more than 30%** of a company's equity securities or voting rights (from 1st February 2011). The 30% threshold shall take account of the maximum number of issued shares that the holder is entitled to acquire on its own initiative alone, immediately or at the end of a maturity period, under an agreement or a financial instrument, without set-off against the number of shares that said holder is entitled to sell under an agreement or a financial instrument. Financial instruments are, *inter alia:*
- bonds exchangeable for shares;
- futures and forward contracts;
- options, whether exercisable immediately or at the end of a maturity period, and regardless of the level of the share price relative to the option strike price. Where the option can be exercised only if the share price reaches a threshold stipulated in the contract, it shall be treated in the same way as a share once this threshold is reached.

— More than 30% of the shares or voting rights of a company whose corporate seat is in France and whose equity securities are admitted to trading on a regulated market in a Member State of the European Union or EEA are held by another company (the "holder") and constitute an essential asset of the holder's assets and:

a) a person acquires control of the holder, within the meaning of the law and regulations applicable to that holder; or

b) a group of persons acting in concert acquires control of the holder, within the meaning of the law and regulations applicable to that holder, unless one or more of them already held control and remains predominant, and in that case, as long as the balance of the respective holdings is not significantly altered (from 1st February 2011).

— When the offer relates to a **company which holds more than 30%** of the capital or voting rights of a **French or foreign company** having capital securities which are admitted to trading on a regulated market of an EEA state or an equivalent market governed by a foreign legal system and **constitute an essential asset of the company holding them,** this offer must be accompanied by documents which prove that an irrevocable and fair takeover bid has been, or will be, filed for all of the controlled company's capital, or for a portion constituting an essential asset, by the opening date of the initial takeover bid at the latest (from 1st February 2011).

— "Acquisition Speed Limit": persons, acting alone or in concert, and directly or indirectly **holding** between 30% and 50% of the total number of equity securities or voting rights **increase such holdings by 2%** or more of total equity securities or voting rights within a period of less than 12 consecutive months (from 1st February 2011). On Alternext (French Multilateral Trading Facility): a natural or legal person, acting alone or in concert **comes to hold more than 50%** of the equity securities or voting rights of a company which its corporate seat is in France and whose equity securities are admitted to trading on a market which is not a regulated market in a Member State of the EU or EEA, if the person managing that market so requests (from 1st February 2011).

2. What are the principal exemptions from the mandatory offer requirement?

— **Temporary exceeding** the 30% threshold or the Acquisition Speed Limit a) when this excess is triggered by an operation which does not aim at giving or increasing control of the target and b) for no longer than 6 months. The corresponding voting rights may not be exercised during such period.

— **Acting in concert without any significant change** – if parties have **declared they are acting in concert** with:
  a) one or more shareholders who already held, alone or in concert, the **majority** of a company's equity or voting rights, provided such shareholders remain **predominant;** or
  b) one or more shareholders that already held, alone or in concert, between 30% and 50% of a company's equity or voting rights, provided that such shareholders maintain a **larger holding** and that, upon the formation of this concert party, they do not exceed one of the mandatory offer thresholds (30% or an increase of more than 2% within 12 months).

— More than **30%** of the shares or voting rights of a company whose equity securities are admitted to trading on a regulated market in a Member State of the European Union or EEA are held by another company (the "holder") and constitute an **essential asset of the holder's assets** and a group of persons acting in concert acquires control of the holder, within the meaning of the law and regulations applicable to that holder and **one or more of them already held control and remains predominant, and in that case, as long as the balance of the respective holdings is not significantly altered** (from 1st February 2011).

— **Other exemptions** where AMF[1] may grant a waiver:
  - gratuitous transfer between natural persons, or distribution of assets by a legal person to its members;
  - subscription to a capital increase by a company in financial difficulty, subject to the approval of its general meeting;
  - merger or asset contribution subject to the approval of the general meeting;
  - merger or asset contribution subject to the approval of the general meeting, combined with an agreement between shareholders of the companies concerned establishing a concert party;
  - reduction in the total number of equity securities or voting rights in the target;
  - holding of a majority of the company's voting rights alone or with parties acting in concert;
  - transfer of equity securities or voting rights between members of the same group;
  - acquisition of the control of a company (the **"holder"**) holding directly or indirectly more than **30% of a company's equity or voting rights** whose equity securities are admitted to trading on a market which is in a Member State of the EU or EEA and **which does not constitute an essential asset of the holder** (from 1st February 2011);
  - merger or asset contribution of a company holding (the **"holder"**) directly or indirectly more than **30% of a French company's equity or voting rights** whose equity securities are admitted to trading on a market which is in a Member State of the EU or EEA and **which does not constitute an essential asset of the merged or contributed holder** (from 1st February 2011).

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as entering into an **agreement** with a view to **buying or selling voting rights or exercising voting rights, to implement a common policy in relation to a company or to take control of it.**

— Such an agreement is **presumed to exist:**
  - between a company, the chairman of its board of directors and its general managers or the members of its executive board or its managers;
  - between a company and the companies it controls;
  - between companies controlled by the same person or persons;
  - between the partners in a simplified joint-stock company in relation to the companies it controls.

— **Shareholdings** of parties acting in concert are **aggregated.**

— Persons acting in concert are **jointly and severally** liable for the obligations imposed on them by law.

[1] "AMF": French Financial Markets Authority in charge of the control of takeover bids.

4. What actions amount to "creeping-in", and what are their consequences?

- If persons, acting alone or in concert, and directly or indirectly holding between 30% and 50% of the total number of equity securities or voting rights, **increase such holdings by 2%** or more of total equity securities or voting rights within a period of less than 12 consecutive months, the mandatory offer requirement will be triggered **(from 1st February 2011)**.
- General exemptions from the offer requirement apply.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
- Principal stages of the offer process:
  1) The **AMF makes public the main provisions of the draft offer.**
  2) The target may issue its own news release to inform the public of the **opinion of its Board of Directors or Supervisory Board.**
  3) The AMF has 10 trading days from the beginning of the offer period to determine whether the draft offer complies with applicable laws and regulations and to issue its **statement of compliance.**
  4) No later than 5 trading days after the AMF has issued its statement of compliance, the target company must file a **draft reply document** with the AMF.
  5) The **offer timetable** is set by the AMF and is based on the date of distribution of the joint offer documents or the offer documents and the target's reply document. The AMF publishes the acceptance period of the offer and the date for the release of the outcome. The offer period for an offer is normally 25 trading days and may not exceed 35 trading days.
  6) In principle, the AMF publishes the **results of the offer** no later than 9 trading days after the end of the offer period.
  7) Settlement.

6. What are the factors impacting the minimum price of an offer?

- For a mandatory offer: the **maximum consideration** paid by the bidder (or parties acting in concert) for target shares in past transactions during the 12-month period before the event triggering the mandatory offer (from 1st February 2011).
- Exceptions (subject to AMF approval) apply if the offer price is determined on the basis of generally accepted, objective valuation criteria, the characteristics of the target and the market for its shares if this is warranted by a **manifest change in the characteristics of the target or in the market for its shares** (e.g. material alteration of the value of the shares in the 12-month period before the draft offer was filed; financial difficulty of the target; the price results from a transaction that includes related items involving the bidder, acting alone or in concert, and the seller of the securities acquired by the bidder over the last twelve months.

7. May the bidder modify the offer price?

- The bidder **may only increase** the offer price until no later than 5 trading days before the end of the acceptance period. An improved cash offer must be at least **2%** higher than the price stated in the public cash offer or the previous improved cash offer.
- From the publication of the draft offer until the end of the offer period, any **purchase** by the bidder of **shares of the target at a higher cash price** than the offer price will lead to an **automatic increase of the offer price to 102%** or more of the stipulated price or the price actually paid on the market.

8. Is the bidder entitled to modify other terms of the offer?

Modification of an offer is not permissible unless **approved by AMF or in the case of a competing** bid.

9. Is the bidder entitled to withdraw the offer?

In principle, the offer, even the voluntary one, is irrevocably binding for the bidder. Nevertheless, offers may be withdrawn in the following cases:

- absence of authorisation given by general meeting;
- higher bid;
- if the **target adopts measures that lead to substantial changes within the target.** Exercise of this right is subject to prior authorisation from the AMF.

10. May a mandatory offer be submitted in the form of a share/paper offer?

— A mandatory offer may be submitted in the form of a cash offer, of a share/paper offer or of combination of these two forms.

— Nevertheless, the mandatory offer **must include a cash option** in two cases:
- where the securities provided in exchange are **not liquid securities** admitted to trading on a regulated market in a Member State of the EU or the EEA; or
- if, in the **12** months before the offer is filed, the **bidder,** acting alone or in concert, has **purchased 5%** of the shares or voting rights of the target for a **cash** consideration.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— A decision of the bidder's supervisory and management boards (or equivalent corporate bodies) to make an offer;

— circumstances which give rise to an offer obligation (acquisition of control); or

— untoward price movements in target equity securities or rumours and speculations concerning an impending offer caused by the bidder's plans or intentions to launch an offer.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to keep sensitive information confidential.

— The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.

— Prior to announcement of the bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

— During the **pre-offer period**[2], the bidder and persons acting in concert must not acquire any of the target securities, unless such acquisitions are the result of an agreement made before the beginning of the pre-offer period, of which they must notify the AMF.

— During the **offer period,** the initiator of a public cash offer not containing a minimum acceptance condition[3], and the persons acting in concert with such bidder are authorised to purchase the target securities. If the offer is settled exclusively in cash, the bidder may carry out the offer by purchasing the securities targeted by the offer at the offer price and only at that price. In a paper offer, a bidder may trade in its own securities as part of a share buyback programme.

— Irrevocable undertakings of shareholders generally are valid (and may qualify as "acting in concert"), except when they would make a (successful) competing offer impossible.

14. What provisions exist relating to board neutrality?

— The Takeover Directive board neutrality rule has been implemented in French law.

— Principally, the reciprocity exception for bidders from EU Member States which have not implemented the board neutrality rule has been implemented in French law.

[2] The pre-offer period is the period between publication by the AMF of the characteristics of a draft offer and the start of the offer period.
[3] "Minimum acceptance conditions": when the bidder stipulates a condition in his offer that a number of securities, expressed as a percentage of the share capital or voting rights, must be tendered in order for the transaction to be successful.

15. What conditions are permissible for mandatory offers?

- A minimum acceptance condition is not allowed for mandatory offers.
- Mandatory offers may only contain statutory conditions (e.g. merger clearance; regulatory approvals).

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may not acquire target shares on terms more favourable than offer terms, unless the offer is improved simultaneously (possible exception: ordinary trading activities of credit institutions).

17. When and in what form does the financing of the offer have to be secured?

The substance and the **irrevocable nature of the commitments made by the bidder** must be **guaranteed** by means of a letter addressed to the AMF. This letter must be signed by at least **one of the sponsoring institutions.** No special form is required.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- **Investment Services Provider(s)** – The draft offer must be filed by one or more investment services providers authorised to act as underwriter(s) and acting on behalf of the bidder(s). The letter addressed to the AMF and guaranteeing the substance and the irrevocable nature of the commitments made by the bidder must be signed by at least one of the sponsoring institutions.
- **Independent appraiser** – The draft offer document must mention, if required, the report by the independent appraiser. The independent appraiser prepares a report on the financial terms of the offer (including a statement of independence, a description of the assessment performed and a valuation of the target). The report's conclusion is in the form of a fairness opinion.
- **Bidder's statutory auditors** – The bidder's statutory auditors must examine all the information provided by the bidder in the draft offer documents and deliver a completion letter for their work. The bidder must forward a copy of the completion letter to the AMF.

19. What are the regulatory fees for takeover proceedings?

- A fixed rate stamp duty is due to the AMF when an application to file a takeover bid is examined. The stamp duty payable amounts to EUR 3,200.
- Additionally, fees in the sum of EUR 10,000 plus an amount equal to the value of the financial instruments bought, exchanged, presented or covered, multiplied by a rate of 0.30‰ when the securities involved give or could give direct or indirect access to the capital or voting rights, and of 0.15‰ in other cases. The fee is payable by the bidder, regardless of the results of an offer.

20. What are the legal consequences of a failure to make a mandatory offer?

- Automatic suspension of the voting rights of the bidder (and parties acting in concert) until a mandatory offer is made;
- a court injunction to launch a mandatory offer (upon application by the President of the AMF);
- there are no criminal sanctions;
- possible damages claims from target shareholders if the AMF has decided that a mandatory offer has to be made.

21. What shareholding is generally required for a squeeze-out?

95% or more of the shares or voting rights, either at the end of the offer period or within three months after the end of the offer period.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A facilitated squeeze-out following any public offer is possible within three months after the end of the offer period provided that the minority shareholders do not hold more than 5% of the shares or voting rights in the target.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The bidder must provide the AMF with a valuation of the securities of the target.
- Appointment of an **independent appraiser** is required. The appraiser prepares a report on the

financial terms of the squeeze-out. The report's conclusion takes the form of a fairness opinion.

- The bidder must designate a custody account-keeper to take charge of centralising the compensation payments.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

Any successful offer must be re-opened within 10 trading days after the publication of the results of the offer. Shareholders of the target that have not yet accepted the offer may then sell their shares to the bidder under the terms of the offer within an additional 10 trading day sell-out period.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Germany

Henrik Drinkuth, henrik.drinkuth@cms-hs.com
Karsten Heider, karsten.heider@cms-hs.com
Martina Schmid, martina.schmid@cms-hs.com

1. What transactions/actions generally trigger a mandatory offer?

- A mandatory offer is generally triggered when a person directly or indirectly gains control of a target company.
- To attain control, a person must hold at least 30% of the voting rights in the target company.
- Under German law, the means through which shares or voting rights have been acquired are irrelevant in determining whether a person has gained control (e.g. acquisition by sale and purchase, inheritance, through capital increases, capital decreases, mergers, etc.).
- The legislative bodies in Germany currently discuss an extension of the statutory duty to make a mandatory offer. According to the respective draft bill, a mandatory offer is not only triggered when a person gains control of a target company, but also when the amount of voting rights is extended beyond the 30% threshold within a certain time limit.

2. What are the principal exemptions from the mandatory offer requirement?

- Upon filing a motion, the German Federal Financial Services Supervisory Authority **("BaFin")** may disregard certain voting rights (e.g. rights acquired by inheritance, change in legal form or restructuring within a group of companies).
- An exemption from the mandatory offer requirement is applicable only under particular circumstances (taking into account the purpose of the acquisition, the potential exercise of control by the bidder, the target's shareholder structure, the sale of shares below the threshold shortly after their acquisition).
- BaFin has commonly applied the exemption in circumstances where the bidder restructures the target for the sole purpose of avoiding insolvency.

3. What actions amount to "acting in concert" and what are their consequences?

- "Acting in concert" is defined as an agreement with other shareholders or other measures taken outside shareholders' meetings to change the target's business strategy.
- BaFin exercises broad authority in determining which actions constitute "acting in concert".
- Shares and voting rights of all parties acting in concert are attributed to the bidder.

4. What actions amount to "creeping-in", and what are their consequences?

There is no specific "creeping-in" provision under German law. However, if a person does not fulfil his disclosure requirements, BaFin may impose fines. A person failing to disclose the acquisition of shares exceeding the 30% threshold will be required to launch a mandatory offer.

5. How long does it take to complete a mandatory offer?

- The minimum acceptance period for a mandatory offer is four weeks and the maximum acceptance period is ten weeks. Generally, the acceptance period ranges between four to five weeks.
- Mandatory offers are generally not subject to closing conditions, except those required by law (such as antitrust clearance). If no governmental approval is required, a mandatory offer will take at least ten to twelve weeks from the date of notification:

- once the bidder has attained control, he must disclose such control to BaFin and the public within seven calendar days.
- Within four weeks of such publication, the bidder must submit all documents related to the disclosure of the offer to BaFin.
- Generally, BaFin will inspect and approve the mandatory offer within five to ten days.
- Once BaFin approves the mandatory offer, the bidder must immediately publish the offer. Publication triggers the start of the offer period, which must run for at least four weeks.
- A mandatory offer is completed two weeks after the end of the offer period.

6. What are the factors impacting the minimum price of an offer?

— The minimum offer price applies to takeover offers (offers by which the bidder aims at attaining control over the target) and mandatory offers.
— The statutory minimum offer price is the higher of a) the weighted average stock market price calculated within a reference period of three months prior to the public disclosure of the decision to make a public offer (or having gained control) or b) the highest price paid or agreed to within a period of six months prior to the disclosure of the offer documents.
— Any price higher than the offer price that has been paid or agreed to during the acceptance period or within one year after the end of the acceptance period generally will affect the offer price.

7. May the bidder modify the offer price?

The bidder may modify the offer price by increasing the cash price or the number of shares being offered as alternative consideration.

8. Is the bidder entitled to modify other terms of the offer?

— Generally, the bidder may only modify the offer by increasing the offer price, waiving closing conditions, offering an alternative (optional) consideration or reducing the minimum acceptance threshold.
— Additionally, the bidder may extend the acceptance period up to a period of ten weeks.

9. Is the bidder entitled to withdraw the offer?

— Generally, the bidder is not entitled to withdraw the offer.
— Whether the bidder is entitled to withdraw the offer decision (i.e. the announcement to make a public offer) is unclear. While there have been isolated cases where bidders published offers without submitting the necessary offer documents to BaFin, failure to submit the offer documents within the four-week period may result in fines or prohibit the bidder from completing the offer (as a result of the delay). Additionally, BaFin may prohibit the bidder from making a new offer for the same target within a one-year period (blocking period).

10. May a mandatory offer be submitted in the form of a share/paper offer?

Consideration for a mandatory offer can only be in cash (i.e. euros).

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— The bidder must publish his decision to make a public offer without undue delay.
— Generally, a firm intention made by the bidder's administrative bodies to make a public offer constitutes a "decision".
— The offer decision may not be subject to conditions.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— There are no specific legal provisions. However the target must consent to due diligence. Because the management of a German stock corporation is bound by confidentiality obligations, the management board is generally prohibited from disclosing sensitive information or business secrets to third parties unless such disclosure is in the company's interest. In a friendly takeover, the target's management may disclose sensitive information on the target company to a potential bidder, provided that confidential information is protected.
— If a bidder becomes aware of inside information during the due diligence process, the bidder may

be prohibited from pursuing his public offer. According to the practice of BaFin, utilisation of inside information simply means "knowledge of inside information". However, it is also common practice that a bidder who has decided to make an offer or consider an offer independently of inside information may pursue the offer even if he becomes aware of inside information at a later stage in the offer process.

13. What deal protection measures may a bidder implement?

— To ensure successful completion of an offer, the bidder may ask the target's board to support his offer and to look for substantial shareholders in the target who are willing to offer their shares if a public offer is launched ("irrevocables").
— If an offer is supported by the target's board and/or major shareholders are willing to give irrevocable undertakings, complications arising from the target's board members are unlikely to occur.
— The bidder may also stipulate certain closing conditions, including:
  - absence of defensive measures carried out by the management (sale of significant assets, repurchase of own shares, etc.);
  - no capital measures during the offer period;
  - no recommendation to shareholders not to accept the offer (it is disputed whether this condition is admissible).

14. What provisions exist relating to board neutrality?

— The Takeover Directive board neutrality rule has not fully been implemented. The target's management board is in principle only prevented from taking actions that may frustrate a bid.
— By amending the articles of association, the shareholders of the target may apply the stricter neutrality rule of Art. 9 Takeover Directive (opt-in).
— A reciprocity exception is possible by way of a shareholders' resolution.

15. What conditions are permissible for mandatory offers?

Mandatory offers may only be subject to statutory conditions (e.g. merger clearance, regulatory approval).

16. May the bidder acquire shares in the target outside the offer (in parallel transactions)?

— In principle, the bidder may acquire target shares in parallel transactions outside the offer.
— If the bidder acquires target shares outside the offer for a higher consideration in the period between the publication of the offer and the publication of the result, the offer price is automatically increased to such higher consideration.

17. When and in what form does the financing of the offer have to be secured?

— Prior to publication of the offer, the bidder must ensure that he will have available the funds necessary to entirely fulfil the offer on the settlement date.
— For a cash offer, prior to publication of the offer, the bidder must also provide written confirmation from a securities services company that the bidder has taken the necessary measures to ensure financing.
— In the offer documents, the bidder must provide detailed information on the financing and especially on the measures he has taken to ensure the availability of the required funds. The financing confirmation must be attached to the offer.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

— It is not mandatory for the bidder or the target to appoint an external adviser or expert.
— In practice, both the bidder and the target usually appoint legal and financial advisers.

19. What are the regulatory fees for takeover proceedings?

BaFin charges fees and expenses. The regulatory fees vary based on the administrative effort involved and the (financial) importance of the offer. Fees range from EUR 10,000 to EUR 100,000 for BaFin decisions concerning admission or prohibition of the publication of an offer.

20. What are the legal consequences of a failure to make a mandatory offer?

— An administrative fine by BaFin of up to EUR 1,000,000.

- BaFin can issue administrative orders against the bidder to force him to comply with his statutory obligations to make a mandatory offer.
- The voting rights of the bidder and, if the bidder acts intentionally, the right to receive dividends are suspended for the duration of the violation.
- The bidder must pay interest to the target's shareholders on the offer consideration in the amount of 5 percent points p.a. above the respective base interest rate for the period of the violation.
- Possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

Generally, 95% of the shares of a stock corporation must be held by a shareholder in order to implement a squeeze-out.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

- A simplified squeeze-out by way of court order is possible if:
  - following a voluntary or mandatory bid the bidder holds at least 95% of the target shares; and
  - the motion for a squeeze-out is filed with the competent court within 3 months after the end of the offer period.
- In a simplified squeeze-out, the compensation offered to the shareholders in the prior voluntary or mandatory bid is presumed adequate if, as a result of the bid, the bidder has acquired shares amounting to at least 90% of the target's share capital affected by the offer.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- In case of a "normal" (i.e. not a "simplified") squeeze-out, the shareholders' meeting must pass a squeeze-out resolution proposed by a shareholder holding at least 95% of the share capital. The shareholders' resolution is to be adopted with the (simple) majority of the votes cast.
- The resolution must provide for adequate cash compensation for the minority shareholders.
- The majority shareholder must submit to the shareholders' meeting a written report on the prerequisites of the assignment of the shares and on the adequacy of the cash compensation.
- The adequacy of the cash compensation offered is to be reviewed by a court-appointed expert.
- The resolution must be entered in the commercial register. At the time of entry in the commercial register, the shares of the minority shareholders are automatically assigned to the majority shareholder.
- The adequacy of the cash compensation offered may be reviewed by a court *("Spruchverfahren")* at the request of former minority shareholders.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- Generally, the shareholders of the target can only accept the offer within the offer period.
- In the event of a successful takeover bid, shareholders who have not yet accepted may accept the offer and sell their shares within two weeks after publication of the results of the offer.
- Following a takeover or mandatory bid, if the bidder is entitled to file a motion for a simplified squeeze-out, shareholders who have not yet accepted may accept the offer and sell their shares within three months after the end of the offer period.

25. What other requirements need to be observed in the context of a sell-out?

There are no other particular requirements.

Hungary

Marton Domokos, marton.domokos@cms-cmck.com
Anikó Kircsi, aniko.kircsi@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

- Acquisition of more than 25% of the voting rights where no shareholder (other than the bidder) holds more than 10% of the voting rights; or
- acquisition of more than 33% of the voting rights in a publicly held company limited by shares *("Nyilvánosan működő részvénytársaság" – "Nyrt.")*.
  In determining the extent of the voting rights (i.e. the shareholder's interest), voting rights through both direct and indirect control and any interest held by persons acting in concert and the interest of close relatives are taken into account and aggregated.

2. What are the principal exemptions from the mandatory offer requirement?

The acquirer of a controlling interest is exempt if no change of control in economic terms has occurred (e.g. intra-group transfers of a controlling interest).

3. What actions amount to "acting in concert" and what are their consequences?

- "Persons acting in concert" means natural or legal persons, or companies which are not legal persons who cooperate on the basis of an agreement aimed at either acquiring a controlling interest in the target or acquiring control of the target or frustrating the successful outcome of a bid.
- Voting rights through both direct and indirect shareholdings and any interest held by persons acting in concert and the interest of close relatives are aggregated.
- When a controlling interest is acquired by persons acting in concert, all parties to the agreement are the subject of the offering obligation jointly, unless the parties have agreed to confer the power to submit the bid upon a particular party. Nominating one person to submit the bid does not release the other parties from their obligation to make the bid.

4. What actions amount to "creeping-in", and what are their consequences?

The concept of "creeping-in" is not regulated in the Hungarian Capital Markets Act **("Capital Markets Act")**. In respect of the gradual acquisition of small amounts of shares, only disclosure obligations are imposed.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will last at least four months. Statutory conditions (especially merger control proceedings etc.) may further delay the closing of the process.
- Principal stages of the offer process:
  1) The offer documents are filed with the Hungarian Financial Supervisory Authority (the **"Authority"**) and sent to the target.
  2) Publication of the offer documents, indicating that they have not yet been approved by the Authority.
  3) Approval of the offer documents by the Authority.
  4) Publication of the approved offer documents.
  5) Offer period of 30–65 calendar days after publication of the approved offer documents.
  6) Announcement of the result of the offer; settlement of the offer price.
  7) 3-month squeeze-out/sell-out period.

6. What are the factors impacting the minimum price of an offer?

- The offer price cannot be less than:
  1) the volume-weighted average price for the 180-day period preceding the date on which the bid was submitted to the Authority for approval, also taking into account certain specific factors;
  2) the highest price contracted for the transfer of the target shares by the bidder and affiliated persons within the 180-day period preceding the date when the bid was submitted;
  3) the aggregate of the contracted call price and the commission for a call or put option exercised by the bidder and affiliated persons within the 180-day period preceding the date when the bid was submitted;
  4) the aggregate of the contracted call price and the commission for a call or put option fixed in an agreement by the bidder and affiliated persons concluded within the 180-day period preceding the date when the bid was submitted;
  5) the consideration received for exercising the voting rights fixed in an agreement by the bidder and affiliated persons concluded within the 180-day period preceding the date when the bid was submitted; and
  6) the amount of equity capital per share based on the latest audited, consolidated annual report of the target.
- In respect of securities admitted to trading on a regulated market, the volume weighted average stock market price is the relevant price to be calculated in respect of point 1). In addition, if available, the volume-weighted average stock market price for the 360-day period preceding the date on which the bid was submitted will be considered.

7. May the bidder modify the offer price?

Yes. The bidder may modify the offer price quoted in the offer up until the last day of the acceptance period, provided that the new price is higher than the price quoted in the offer. The new price also applies retroactively to prior acceptances.

8. Is the bidder entitled to modify other terms of the offer?

The bidder may only request one extension of the offer period from the Authority up to a maximum of 15 calendar days (the offer period may be a maximum of 65 days).

9. Is the bidder entitled to withdraw the offer?

Yes, if the offer contains a statement reserving the right to withdraw the bid if the acquired interest (based on acceptances) is less than 50%.

10. May a mandatory offer be submitted in the form of a share/paper offer?

Yes. However, if the consideration is not only made in cash, shareholders of the target may request that the bidder offers a cash-only alternative.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

There are no specific events/circumstances described in the Capital Markets Act which may trigger an obligation to make a public announcement of the bidder's intention to launch an offer.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- The target's management is under a general obligation to keep sensitive information confidential.
- The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.
- If before the publication of the bid, the target's management (at the bidder's request) has provided any information to the bidder concerning the target's operations, such information must be treated as confidential in compliance with the regulations on business secrets, securities secrets and insider dealing.

13. What deal protection measures may a bidder implement?

- There is no established case law relating to deal protection measures.
- Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations.
- Irrevocable undertakings of shareholders are generally permissible, but may constitute "acting in concert".
- Break fees payable by the target are likely to be unenforceable.
- The Capital Markets Act does not contain express rules regarding deal protection measures which may be taken by the board. As a general rule, protective undertakings in favour of a particular bidder are only permissible if they are in the best interests of the long-term business and strategic plans of the target (the board neutrality rule). However, the board must provide its opinion on the bid and communicate this to the shareholders. This opinion may provide support for the deal. Subject to certain exceptions, the board must commission an independent financial expert to assess the bid at the company's expense.

14. What provisions exist relating to board neutrality?

- The Takeover Directive board neutrality rule has been implemented. The target's articles of association may stipulate that the board may not interfere with or disturb the offer unless prior consent is granted by a general meeting.
- The board neutrality rule is not applicable to a bidder, unless it is applicable in the bidder's jurisdiction; nor is it applicable to bidders who are under the direct or indirect control of a company not subject to the board neutrality rule.

15. What conditions are permissible for mandatory offers?

Besides the right to withdraw the offer, mandatory offers may only be subject to statutory conditions (e.g. merger clearance, regulatory approvals).

16. May the bidder acquire shares outside the offer (in parallel transactions)?

No. The bidder and persons acting in concert (for natural persons, any of their close relatives holding any controlling interest in the target) and their affiliated companies (collectively: "affiliated persons") cannot enter into any deal for the transfer, alienation or encumbrance of the shares to which the bid relates between the day of submission of the bid and the last day of the offer period, except in respect of share transfer agreements entered into by those affiliated persons and the bidder, under which such persons offer their shares to the bidder. The bidder may acquire these shares under the same terms as the offer.

17. When and in what form does the financing of the offer have to be secured?

- Details of the financing of the bid must be attached to the application for approval.
- The financing may be secured with:
  - cash;
  - government securities issued by any Member State of the European Union or the OECD;
  - a bank guarantee issued by a credit institution established in any Member State of the European Union or the OECD.
- No security is required for shares held by persons acting in concert if they submit a statement declaring that they will not accept the offer, and that they will not sell or agree to sell their shares during the bid period and during the following 2 years.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder must appoint a licenced investment firm or credit institution (investment service provider).
- A written declaration of liability must be signed by the bidder and the investment service provider and attached to the bidder's business report (which is prepared by the bidder in order to provide information to the public on its business activities). The declaration must stipulate that all data and information contained in the business report is true and correct and that it contains all of the information necessary to make an informed judgment about the bidder and the offer.
- The bidder and the investment service provider will be jointly and severally liable for any and all damages resulting from any misleading information in the business report or undisclosed material information.

19. What are the regulatory fees for takeover proceedings?

Currently, no fee is payable to the Authority during the takeover proceeding.

20. What are the legal consequences of a failure to make a mandatory offer?

- The shareholder cannot exercise any shareholder's rights in the target and must sell his stake within 60 days of the date of acquisition or receipt of a resolution of the Authority.
- Administrative fines which may be imposed by the Authority range from HUF 100,000 (EUR 345) to HUF 500,000,000 (EUR 1,725,000).
- Possible claims for damages from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

At least 90% of the voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Dominant shareholders may exercise their squeeze-out right within three months from the closing date of the relevant mandatory or voluntary offer in respect of the remaining shares of the target if they:
- declared their intention to exercise their squeeze-out right in the offer;
- have acquired at least 90% of the voting rights in the target as part of the offer or within 3 months from the closing date of the successful offer; and
- demonstrate that they have sufficient funds to cover the purchase of all the outstanding shares (bid security).

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Dominant shareholders must report their intention to exercise the squeeze-out right to the Authority and must also initiate the publication of their intention to exercise this right on the website of the target and on the official website of the Authority and the Budapest Stock Exchange (if the target is a listed company).
- The dominant shareholders must deposit the bid security for the benefit of the minority shareholders in an account opened with a credit institution which has a registered office in an EU Member State.
- The purchase price payable for the squeezed-out shares will be the offer price or the amount of equity capital per share, whichever is higher.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

If the bidder's control in the target exceeds 90% of the voting rights when closing out the bid, the bidder must purchase the remaining shares, if requested by the minority shareholders, within 90 days following the day on which the notice in respect of the acquisition of such control was published.
The minimum share price payable is calculated in accordance with the squeeze-out price.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Italy

Pietro Cavasola, pietro.cavasola@cms-aacs.com
Serena Carroli, serena.carroli@cms-aacs.com
Matteo Ciminelli,matteo.ciminelli@cms-aacs.com

1. What transactions/actions generally trigger a mandatory offer?

— Direct or indirect **shareholding exceeding 30%** of the voting rights obtained through acquisitions;
— **acting in concert** by parties with an aggregate shareholding of more than 30% of the voting rights;
— **creeping-in.**

2. What are the principal exemptions from the mandatory offer requirement?

The principal exemptions apply in the following cases:

— the shareholding equal to more than 30% of the voting securities is held **as a result of a voluntary global takeover bid.**
— Acquisition of more than 30% of the voting rights but **another shareholder** or other shareholders jointly **hold the majority** of the voting rights. The acquirer must notify the Takeover Commission **("Consob")** and the market of the non-existence of agreements or plans with these other shareholders.
— The 30% threshold is exceeded:
  - by subscribing shares in a capital increase in connection with a plan (notified to Consob and the market) for restructuring the debt of a listed **company in crisis;**
  - by **intra-group transfers;**
  - by the exercise of **pre-emption, subscription or conversion rights;**
  - **by not more than 3%** and the acquirer **undertakes to dispose of the excess shares** within 12 months and not to exercise the related voting rights;
  - due to **mergers or spin-offs.**

— The shareholding equal to more than 30% of voting securities is owned as a result of a takeover bid or exchange tender offering on at least 60% of the securities in each category and other conditions are complied with (i.e. **prior partial bid**).

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as cooperating together on the basis of a specific or tacit agreement, verbal or in writing, albeit invalid or without effect, for the purpose of **acquiring, maintaining or strengthening control over the target or to counteract** achievement of the aims of a **takeover bid.**
— In any event, the **parties to an agreement,** even if void, are considered to be acting in concert if the agreement:
  - relates to the exercise of voting rights (or the obligation of consultation prior to the exercise of voting rights) in companies with listed shares and companies that control them.
  - Sets limits on the transfer of the related shares or of financial instruments that entitle holders to buy or subscribe the shares or provides for the purchase of such shares or financial instruments.
  - Has as its object or effect the exercise, jointly or otherwise, of a dominant influence on such companies.

— In any event, **the following persons** are considered to be acting in concert:
  - an entity, its parent company and its subsidiaries;
  - companies subject to joint control;
  - a company and its directors, members of the management board, or supervisory board or general managers.

— **Consob will identify,** by regulation, the **cases** in which the parties are **presumed** to be acting in concert.
— All **parties acting in concert** with the acquirer of control are **jointly and severally liable** for the

obligations deriving from a mandatory offer and a squeeze-out commitment .

4. What actions amount to “creeping-in”, and what are their consequences?

- The direct or indirect acquisition of an **additional 5% of shares** by a shareholder who already holds more than 30% of the voting shares without having the majority of voting rights over any 12-month period will trigger a mandatory offer requirement. General exemptions from the offer requirement apply.
- A mandatory offer is also triggered if in the 12 months subsequent to the close of an unsolicited bid (i.e. a prior partial bid):
  - the bidder, or persons acting in concert, have acquired shareholdings **exceeding 1%** (including acquisitions by forward contracts expiring at a later date).
  - The target has approved a merger or a spin-off.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
- Principal stages of the offer process:
  1) **Filing of the offer documents with Consob** within 20 days after notice to Consob and announcement of the bidder’s intention to launch an offer (or after having exceeded the 30% threshold in the case of a mandatory offer). Consob requires the offer documents to be filed along with the notice to Consob.
  2) **Consob approval** within **15 days** (suspension of term possible if Consob requires further information within 5 days).
  3) **Publication of the offer documents** and communication of these to the target.
  4) A **statement by the target’s board of directors** must be sent to Consob at least two days before the date set for its disclosure to the public. Supplemented with any information requested by Consob, it must be made known to the market not later than the first day of the acceptance period.

  The **acceptance period** will be agreed with the stock exchange company. It must be 25–40 days for voluntary full takeover bids and prior partial bids and 15–25 days for other offers. Consob may extend the offer period up to a maximum of 55 days.
  5) **Announcement of the result of the offer;** settlement.
  6) Three-month **sell-out period.**

6. What are the factors impacting the minimum price of an offer?

- Mandatory offer: the (minimum) price must be not lower than the **highest price** paid by the bidder (and persons acting in concert) for target shares in the **12-month period prior to** the **notice** to Consob of the bidder’s intention to launch an offer. If no purchases of such securities have been made in that period, the offer price must not be lower than the **weighted average market** price in the previous **12 months.** Exceptions are regulated by Consob.
- During the period between the date of the notice to Consob and the date of payment of the offer price, if the bidder directly or indirectly acquires target shares or the right to acquire them at a later date for a higher price than the offer price, the offer price must be increased to such higher price.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price. Competing and increased offers will be admitted if the total consideration for each class of financial instrument involved is higher than that of the last competing offer or increased offer or if they involve the elimination of a condition for the offer. In the case of increased offers, the quantity of shares requested may not be reduced (following publication of a competing offer or an increased offer, acceptances of the previous offers will be revocable).

8. Is the bidder entitled to modify other terms of the offer?

- Offer increases and **other amendments** to the offer must be notified to Consob and published in the same manner as the original offer up to three days before the end of the offer period.
- **Reduction** of the quantity of shares requested is **not permitted.**

9. Is the bidder entitled to withdraw the offer?

Offers are irrevocable. Any clause stating the contrary is void.

10. May a mandatory offer be submitted in the form of a share/paper offer?

The bid price of a mandatory offer **may consist,** wholly or in part, of **securities** (provided that the transactions, during the 12 months before exceeding of the threshold, have been paid proportionally in such securities, according to Consob regulations). **If** the securities offered for payment are not admitted to trading on a regulated market in an EU Member State **or if,** in the 12 months before the notice to Consob and until the close of the offer, the bidder or persons acting in concert have made a cash purchase of securities that confer at least 5% of voting rights at the shareholders' meeting of the target, the bidder must offer a cash payment at least as an **alternative.**

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- A **decision** of the bidder's board of directors (or equivalent corporate body) to make an offer;
- circumstances which give rise to an **offer obligation;**
- if there are **rumours** of a possible bid and irregularities in the market performance of the securities concerned, Consob may request the potential bidder to disclose his intentions to the public.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- The target's management is under a general obligation to keep sensitive information **confidential** (should persons acting on behalf of the target disclose sensitive information – which, if it were made public, would be likely to have a significant effect on the prices of the securities (i.e. inside information) – in the normal exercise of their employment, profession or duties to a third party who is not subject to a confidentiality requirement, they must make complete public disclosure thereof, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure).
- The target's management may permit **due diligence** by the bidder.
- During the offer period, Consob may require the target or the bidder to **disclose** information to the public.

13. What deal protection measures may a bidder implement?

- **Pre-launch stake building** by the bidder will generally be permissible under takeover law (but may trigger a requirement to disclose the bidder's intention to launch a bid in case of rumours).
- **Irrevocable undertakings** of shareholders generally are permissible, but may establish "acting in concert".
- Some protective rules in favour of the bidder are provided by the law, e.g.:
  - **board neutrality rule** (in general, the target must refrain from taking any action which may result in the frustration of a bid, unless authorised by a resolution of the shareholders' meeting);
  - **breakthrough rule** (in general, the rule makes provisions concerning limits to the transfer of securities and voting rights, reported in the target's by-laws or in shareholders' agreements, unenforceable against the bidder during the offer).

14. What provisions exist relating to board neutrality?

- The **Takeover Directive board neutrality rule** has been implemented.
- There is **no reciprocity exception** for bidders from EU Member States which have not implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

- Voluntary offers may **not** be subject to conditions whose occurrence **is solely within the bidder's discretion.**
- Mandatory offers may be subject to **statutory conditions** (e.g. merger clearance, regulatory approvals) only.
- **Minimum** acceptance conditions, **MAC** clauses relating to the target, financial covenants and

non-insolvency clauses are frequently used with voluntary offers.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- During the period between the date of the notice to Consob and the date of payment of the offer price, if the bidder directly or indirectly acquires target shares or the right to acquire target shares at a later date for a higher price than the offer price, the offer price must be increased to such higher price.
- If **competing offers** have been made, until the end of the offer period **the bidder may not acquire,** directly or indirectly or through nominees, target shares or the right to acquire target shares at a later date **at prices higher than the price of his offer.**

17. When and in what form does the financing of the offer have to be secured?

- Prior to launching the offer, the bidder must ensure that **financing for the entire cash bid** (assuming full acceptance of the offer) **is in place** by way of a) free cash, b) open credit lines or c) the firm financing commitment of a financial institution.
- The notice to Consob of the bidder's intention to launch an offer must include *inter alia* documentation of the **performance guarantees obtained,** or **a commitment to obtain them** before the start of the acceptance period accompanied by a detailed description of such guarantees. The guarantees must be immediately exercisable.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The notice to the market of the bidder's intention to launch an offer must include *inter alia* a **list of the bidder's consultants,** if any.
- By law, the **target** – as well as any other listed company – **must have its accounts audited** by an independent expert for the entire listing period.
- **In practice, an expert is usually appointed by the bidder** from among the "Big Four" accountancy firms, even where a major investment bank acts as financial advisers.

19. What are the regulatory fees for takeover proceedings?

- The bidders who have launched an offer must pay for any concluded bid, by March of the following year, a fee to Consob equal to a **fixed amount** of EUR 2,770 **plus,** if the exchange value of the offer exceeds EUR 13,000,000, **an amount equal to 0.021308% of the exchange value exceeding EUR 13,000,000.** The maximum amount of the fees for any takeover bid is EUR 2,500,000.
- The exchange value of the offer is the exchange value of the offer to the public in Italy and is **calculated on the basis of the final price** of the offer reported in the offer documents and **the number of shares effectively acquired.**

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory **suspension of the voting rights** of the bidder (and parties acting in concert);
- the **securities exceeding** the thresholds must **be disposed of** within 12 months. As an alternative, Consob may require a mandatory offer to be launched and set the price.
- **Administrative fines** ranging from EUR 25,000 to the total consideration payable by the bidder under a mandatory offer.
- Possible **damages claims** from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

- **95%** of the capital represented by securities in an Italian listed company triggers both the **commitment of the bidder to squeeze-out (and** the corresponding **sell-out** right of the **minority)** and the **right of the bidder to squeeze-out.**
- **90%** triggers the **commitment to squeeze-out** unless a free float sufficient to ensure regular trading is restored within 90 days.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A simplified squeeze-out (i.e. the right of the bidder to squeeze-out) after a successful bid is possible if: a) following a full takeover bid the bidder has acquired shares representing at least **95%** of the target's capital, b) the squeeze-out is exercised within **three months** after the end of the offer period, or c) the intention to exercise the squeeze-out right was **published in the offer documents.**

23. What other legal requirements need to be observed in the context of a squeeze-out?

— If the takeover bid price is equal to that of the previous takeover bid, the commitment of the bidder to squeeze-out may be effected by means of a **reopening of the terms of the bid.**
— Where the price is established by Consob, **the bidder must send Consob details for the determination of the squeeze-out price,** together with a statement by the target's independent auditors on the fairness of such details.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

— A sell-out is possible if: a) the bidder, after a full takeover bid, becomes the holder of shares representing at least **95%** of the capital of an Italian listed company, b) any party becomes the holder of a shareholding exceeding **90%** of the capital represented by securities admitted to trading on a regulated market and unless a free float sufficient to ensure regular trading performance is restored within ninety days, or c) a **voluntary squeeze-out offer** is completed (i.e. a voluntary offer where the bidder has obtained more than 90% of the voting share capital).
— In the case of a) or b) above, where the shareholding was obtained solely as a result of a full takeover bid, **the price is equal to** the **offer price** of the full takeover bid. The same applies in the case of a voluntary takeover bid where the bidder has acquired shares representing not less than 90% of the share capital with voting rights in the bid. **In other cases, the sell-out price is established by Consob,** also taking into account any previous bid price or the market price in the half-year prior to announcement of the bid, or prior to the acquisition giving rise to the commitment of the bidder to squeeze-out. The price has the same form as that of the takeover bid, but the seller may request full payment in cash.

25. What other requirements need to be observed in the context of a sell-out?

The transfer becomes effective when **notice of the deposit of the consideration with a bank** is given to the target, which must make the relevant entries in the shareholders' register.

The Netherlands

Reinout Slot, reinout.slot@cms-dsb.com

1. What transactions/actions generally trigger a mandatory offer?

- Direct or indirect control through acquisition of more than 30% of the voting rights of the target;
- acting in concert by parties with an aggregate shareholding of more than 30% of the voting rights of the target;
- creeping-in by accumulating a large position in the target on the open market.

2. What are the principal exemptions from the mandatory offer requirement?

An acquirer of a controlling interest is exempted from the mandatory offer requirement in the following circumstances:

- a controlling interest is obtained in an open-end collective investment scheme (i.e. an investment company or unit trust that allows participants to request for redemption or repayment of their shares or units that are requested or acquired for collective investment to have the participants share in the return on the investments).
- A controlling interest is obtained as a result of a full (voluntary) public bid.
- The acquirer is an independent protective foundation that acquires shares after the announcement of a hostile bid as a protective measure for a maximum period of two years.
- The acquirer is an independent trust office that has issued depository receipts.
- An intra-group transfer of the controlling interest;
- a controlling interest is obtained in a company in moratorium or bankruptcy.
- Hereditary succession;
- a controlling interest is acquired simultaneously with one or more other persons provided that the mandatory bid requirement applies to the person who can exercise the most voting rights.
- A controlling interest was acquired before the shares or depository receipts are admitted to trading on a regulated market for the first time.
- The acquirer is a custodian of shares that cannot exercise voting rights at his discretion.
- Acquisition took place by marriage to a person with a controlling interest.
- The general meeting of the target consents before the bidder obtains control that no mandatory offer should be made. The consent must be carried by 95% of the shareholders other than the acquirer of the controlling interest.
- Group companies acquire (directly and indirectly) a controlling interest simultaneously, as long as one of the group companies makes the public bid.
- The control threshold is only exceeded temporarily.

3. What actions amount to "acting in concert" and what are their consequences?

- "Acting in concert" is defined as persons cooperating (on a long-term basis or for a single occasion) under an agreement (oral or written) with the aim of acquiring control in the target or, if in cooperation with the target, to frustrate the success of an announced public takeover bid. Affiliated companies (group companies and controlled companies) are deemed to be acting in concert.
- Shareholdings of parties acting in concert are aggregated to determine whether the threshold has been reached.

4. What actions amount to "creeping-in", and what are their consequences?

- Direct or indirect control through acquisition of more than 30% of the voting rights of the target. The obligation to make a mandatory offer lapses if the acquirer loses his controlling interest within 30 days of acquiring it.

- The obligation to make a mandatory offer, does not apply for parties who already held control over a target on 28 October 2007, the date of entry into force of the Dutch Public Offers Decree. This also applies if such pre-existing control is increased.
- Several other general exemptions from the mandatory offer requirement apply.

5. How long does it take to complete a mandatory offer?

- The entire takeover process, from the start of preparation of the offer document until the end of the acceptance period, will require at least three months. Statutory conditions (especially merger control proceedings) may further delay the process.
- Principal stages of the mandatory offer process:
  1) Public announcement. A mandatory bid is deemed to be announced if a) the bidder publishes a press release that a mandatory offer will be made, b) the bidder fails to make a mandatory offer and a measure of the Enterprise Chamber at the Amsterdam Court of Appeals (*"Ondernemingskamer"* – the **"Enterprise Chamber"**) to do so has become final and conclusive, or c) a press release is published stating that, in accordance with the laws of another Member State, a mandatory offer is required.
  2) Certain funds. The bidder must procure that, at the time of the request for approval of the offer document, it is able to pay the consideration in cash or has taken all reasonable measures to provide any other type of consideration to declare the offer unconditional.
  3) Filing of the offer document. Within four weeks of the first public announcement of the bid, the bidder must publicly announce that he will submit the draft offer document to the Netherlands Authority for the Financial Markets (*"Autoriteit Financiële Markten"* – the **"AFM"**) for its approval within a time period to be determined by the bidder and to be stated in the public announcement, or the bidder must publicly announce that he will not do so. The time period until submission to the AFM may not exceed 12 weeks from the first public announcement of the bid. The AFM must approve the offer document.
  4) Publication of the offer document. Within six business days after the bidder has been notified of the AFM's approval, the bidder must make the offer document publicly available or publicly announce that he will not be making a public bid.
  5) Offer period. The maximum offer period is ten weeks. The bidder is permitted to extend the offer period once, for a period of at least two weeks and a maximum of ten weeks.
  6) Shareholders' meeting and boards' position. Provided that the target has its seat in the Netherlands, it must convene an extraordinary general meeting of shareholders. No later than four business days prior to the general meeting, the target must make a document available to its shareholders setting out the position of its boards with respect to the public bid.
  7) Announcement of the result of the offer; settlement of the offer price.

6. What are the factors impacting the minimum price of an offer?

- A bidder making a mandatory bid must offer a "fair price". A fair price is the highest price paid by the bidder – or persons acting in concert – for the relevant securities in the year preceding the announcement of the mandatory bid. If the bidder did not acquire any such securities in the year preceding the announcement of the mandatory bid, the fair price is the average stock exchange price of such securities during that one-year period.
- At the request of the bidder, the target or a shareholder in the target, the Enterprise Chamber may determine the "fair price". However, the Enterprise Chamber will dismiss such a request if the offer price deviates from the average share price on the stock exchange by less than 10% during a three-month period preceding the request.

7. May the bidder modify the offer price?

The bidder may only increase the offer price. The increased offer price also applies retroactively to acceptances. A bidder may increase his bid only once after publishing the offer document. However, if the bidder – or persons acting in concert – acquire any securities for a higher price than the offer price between the announcement of the mandatory bid and the end of the offer period, the bidder must increase the bid price to that higher price.

8. Is the bidder entitled to modify other terms of the offer?

- In the period between announcement and publication of the offer document, the bidder is entitled to make any modifications regarding his public offer, provided that the bidder complies with mandatory publication requirements, e.g. disclosure of inside information.
- After publication of the offer document, the bidder is not allowed to make any modifications to his offer (other than to the price, subject to the limitations noted above). However, an exemption to this rule is that the bidder may extend the offer period once. The first bidder also has this possibility in the event of a competitive offer.

9. Is the bidder entitled to withdraw the offer?

After publication of the offer document, the bidder is not entitled to withdraw the offer. However, if it has been determined that a condition specified by the bidder will not be fulfilled, the bidder may at his discretion decide to let the offer lapse.

10. May a mandatory offer be submitted in the form of a share/paper offer?

- The offer price may be paid in securities, in cash, or in a combination of the two.
- A share/paper offer is only permissible if the offered securities are liquid and have been admitted to trading on a regulated market.
- The price must in any event also be stated in cash if the bidder has acquired 5% or more of the voting rights in the target in exchange for cash during a period of one year prior to the announcement of the mandatory offer.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- Any circumstances that give rise to an obligation to make an offer (e.g. acquisition of control or negotiations with the target that can no longer be kept confidential); and
- the bidder and the target having reached "conditional agreement" on the offer. Conditional agreement will be deemed to exist when the parties have reached agreement, even when such agreement can still be influenced by third parties.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- In a friendly bid, the bidder is commonly given the opportunity to carry out a due diligence. In a hostile bid, the bidder is generally restricted to publicly available information.
- Usually, the target is only prepared to allow the bidder to conduct due diligence investigations if the bidder enters into a confidentiality agreement with the target.
- Prior to the announcement that the bidder has reached conditional agreement on the offer, all parties involved in the due diligence are under a continuing duty of confidentiality. If such confidentiality cannot be safeguarded, a press release disclosing that negotiations are taking place should be published without delay.

13. What deal protection measures may a bidder implement?

- Pre-launch stake building by a bidder will generally be permissible but may result in the bidder acquiring control – in which case a mandatory offer is required – and may also trigger the requirement to disclose the bidder's intention to launch a bid.
- Irrevocable undertakings from major shareholders are permissible, but may establish "acting in concert" if the intention of the irrevocable undertakings is to pursue a sustained joint policy and to exercise the voting rights jointly.

14. What provisions exist relating to board neutrality?

- The Takeover Directive board neutrality rule has been implemented in the Netherlands. The target is therefore free to choose whether or not to protect itself against takeover bids, subject to certain limitations.
- A target that has voluntarily relinquished any protective measures may decide to revive its protection if a protected bidder has made an offer for its shares.

15. What conditions are permissible for mandatory offers?

- Mandatory offers may be subject to statutory conditions (e.g. merger clearance, regulatory approvals) only.
- A voluntary offer may not contain conditions whose fulfilment is within the bidder's discretion.
- Minimum acceptance conditions, MAC clauses relating to the target, financial covenants, competing offer clauses and non-insolvency clauses are frequently used with voluntary offers.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- The bidder may not acquire target shares on terms more favourable than the offer terms, unless the offer is improved simultaneously (possible exception: ordinary trading activities of credit institutions).
- The bidder must comply with Dutch disclosure and notification obligations and any standstill agreement in place with the target.
- Parallel acquisitions of shares are frequently used in voluntary control-seeking offers.

17. When and in what form does the financing of the offer have to be secured?

The bidder must procure that, by the time the request for approval of the offer document is filed with the AFM, it is able to pay the consideration in cash or has taken all reasonable measures to provide any other kind of consideration to declare the offer unconditional.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- There is no legal requirement for an external adviser or expert to be involved, although they typically support the bidder and the target in the offer process.
- The offer document will include financial information provided by the auditors.
- The management board of a target commonly obtains a fairness opinion from a financial adviser.

19. What are the regulatory fees for takeover proceedings?

The AFM currently charges the following fees:
- EUR 23,700 for approval of the offer document;
- EUR 4,450 after the bidder has announced a public offer;
- a fee of 0.0074% of the total amount that the bidder pays for the securities acquired in the period between the announcement of the offer and declaring the offer unconditional, with a maximum cap of EUR 630,000. This fee is charged after the bidder announced whether the public offer will be declared unconditional.
- EUR 6,950 for granting an exemption from the obligation to make a mandatory offer.

20. What are the legal consequences of a failure to make a mandatory offer?

- If a person that is required to make a mandatory public offer fails to do so without being able to rely on an exemption, the Enterprise Chamber may issue an injunction ordering the person to make a public bid. Such an injunction can be ordered at the request of:
  - the target itself;
  - a shareholder of the target;
  - a holder of depository receipts representing shares in the capital of the target issued with the cooperation of the target; or
  - a foundation or association acting as a representative of shareholders.
- In addition to an order to make a mandatory public offer, the Enterprise Chamber may order the following measures to force a person that has acquired a controlling interest in the target to actually make an offer:
  - an order suspending that person's voting rights;
  - an order prohibiting that person from participating in the target's general meeting;
  - temporary transfer of the controlling interest to an independent foundation; or
  - suspension or annulment of resolutions passed by the target's general meeting.

21. What shareholding is generally required for a squeeze-out?

95% of the shares and voting rights of the target.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

If the bidder has acquired 95% of the shares and voting rights of the target, the bidder may invoke a statutory squeeze-out right against the remaining shareholders. Squeeze-out proceedings must be initiated within three months after the acceptance period of the offer has lapsed and must be brought before the Enterprise Chamber.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- Provided that the proceedings are initiated by the bidder within three months after the acceptance period, and at least 90% of the shares have been acquired as a result of the voluntary public offer, the public offer price is presumed to be a reasonable squeeze-out price.
- For mandatory offers, the consideration offered in the bid is presumed to be fair.
- The squeeze-out price to the minority shareholders is subject to the addition of statutory interest as of, usually, the date of the judgment.
- The bidder is usually required to pay the costs of any experts appointed by the Enterprise Chamber.

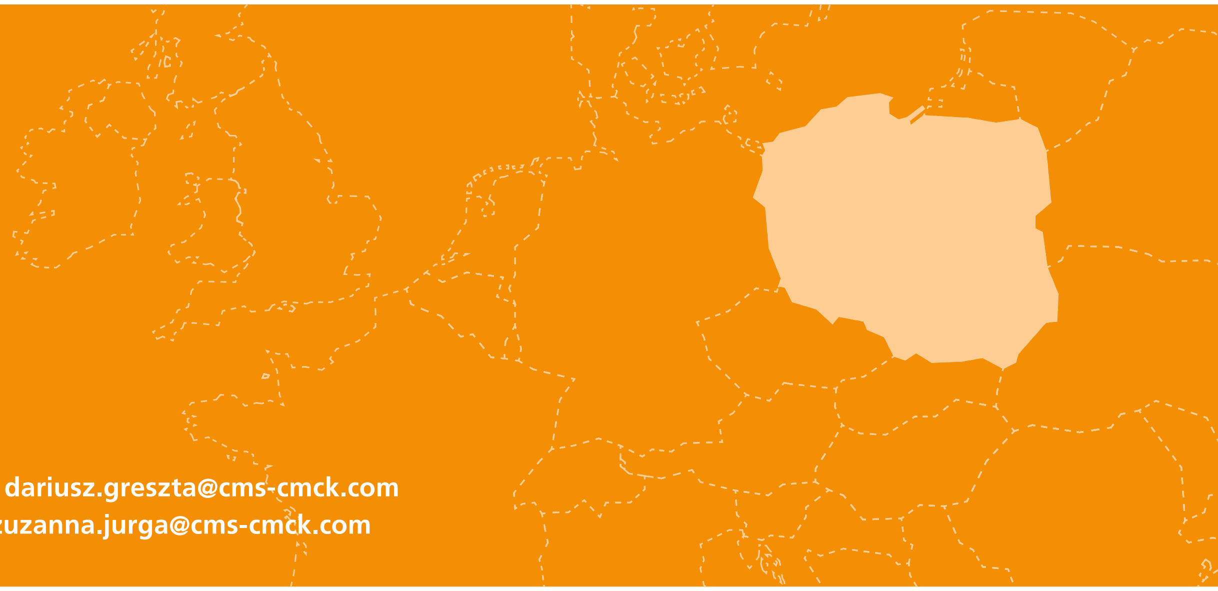
24. Under what circumstances are the shareholders of the target entitled to a sell-out?

If the bidder acquires 95% of the shares and voting rights in the target, minority shareholders can invoke the right that the bidder must purchase their shares against a fair price. Minority shareholders must start sell-out proceedings before the Enterprise Chamber within three months after the acceptance period of the public offer has lapsed.

25. What other requirements need to be observed in the context of a sell-out?

No particular requirements other than those to be observed in the context of a squeeze-out.

Poland



Dariusz Greszta, dariusz.greszta@cms-cmck.com
Zuzanna Jurga, zuzanna.jurga@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

— Direct or indirect control through an acquisition of more than 33% of the voting rights (mandatory offer for a number of shares allowing 66% to be attained; however, a bidder may choose to announce an offer for 100% of the shares);
— direct or indirect control through acquisition of more than 66% of the voting rights (mandatory offer for 100% of the shares);
— creeping-in.

2. What are the principal exemptions from the mandatory offer requirement?

— Exemptions that relate to all types of mandatory offers:
- acquisition of shares that are subject to trading in an alternative trading system only or acquisition of shares that are not subject to an organised trading system;
- intra-group share transfers;
- acquisition of shares in execution or insolvency proceedings;
- acquisition of shares as a result of execution of financial collateral;
- acquisition of pledged shares by a pledgee;
- acquisition of shares as a result of inheritance (with certain exceptions).

— Exemptions relating to mandatory offers in creeping-in scenarios and when exceeding 33%:
- acquisition of shares from the Polish State Treasury in an initial public offering;
- acquisition of shares from the Polish State Treasury within three years following completion of a sale of shares by the Polish State Treasury in an initial public offering.

— Exemptions that relate to mandatory offers in creeping-in scenarios only:
- acquisition of shares in primary trading;
- acquisition of shares as a result of an in-kind contribution to the share capital of a company;
- acquisition of shares as a result of merger or division of a company.

3. What actions amount to "acting in concert" and what are their consequences?

— "Acting in concert" is defined as a written or oral arrangement concerning: a) the acquisition of shares in the target; and/or b) concerted voting related to important matters concerning the target; and/or c) a common and stable policy for the target.
— Shareholdings of parties acting in concert are aggregated.
— Parties acting in concert are jointly liable for the mandatory offer and the offer price.
— A presumption of acting in concert applies *inter alia* to spouses, family or joint-household members, principals or their proxies (other than investment firms) authorised to dispose of or acquire shares and associated entities (i.e. entities holding at least 20% of votes in the investor or having significant influence or co-control over it).

4. What actions amount to "creeping-in", and what are their consequences?

— Acquisition of more than 10% of the voting rights by an acquirer (holding less than 33% of the votes) within any 60-day period; such acquisition is allowed only by way of an offer for not less than 10% of the voting rights.
— Acquisition of more than 5% of the voting rights by an acquirer (holding more than 33% of the votes) within any 12-month period; such

acquisition is allowed only by way of an offer for not less than 5% of the voting rights.

5. How long does it take to complete a mandatory offer?

— In practice, the takeover process usually lasts about three months (this will also depend on the type of mandatory offer). Statutory conditions (especially merger control proceedings) may further delay the process.
— Principal stages of the offer process:
  1) Appointment of a broker and preparation of the offer documents.
  2) Establishing collateral for the financing of the offer.
  3) Notification of the Financial Supervision Authority, the Warsaw Stock Exchange and the public about the offer.
  4) Subscription period (starts no earlier than 14 business days after the offer documents are filed with the Financial Supervision Authority and the Warsaw Stock Exchange and lasts not less than 14 or 30 days – depending on the type of mandatory offer).
  5) Settlement.

6. What are the factors impacting the minimum price of an offer?

— The minimum price of the shares in an offer cannot be lower than the average market price:
  • during the 6 month period preceding the announcement if the offer is made: a) for 66% of the shares or b) for a smaller number of shares under creeping-in requirements;
  • during the 6 month period and the 3 month period (depending on which average market price is higher) preceding the announcement if the offer is made for 100% of the shares.
— In addition, the minimum price of the shares cannot be lower than:
  • The highest consideration paid per target share by the bidder, by any of the bidder's direct or indirect subsidiaries or by the bidder's dominant entities or by parties acting in concert within 12 months preceding the announcement of the offer.
— Exceptions:
  • the pricing limitations indicated above do not apply with respect to shares comprising at least 5% of all shares of the target that are to be acquired in the offer if an agreement between an acquirer and a given person accepting the offer exists;
  • when the average market price established in accordance with the rules indicated above differs significantly from the fair value of shares due to certain circumstances (e.g. the poor financial condition of the target), the bidder may, with the consent of the Financial Supervision Authority, offer a price lower than the minimum price.

7. May the bidder modify the offer price?

The bidder may change the offer price, subject to the minimum price requirements and subject to the following conditions:
— a change cannot be made more often than every 5 business days (this time limit does not apply if a competing offer has been announced);
— the change must be publicly announced;
— if the new price is higher than the previous price, it applies retroactively (except for sellers who have already been paid by the bidder);
— if the new price is lower than the previous price, persons that accepted the offer prior to the change must be paid the previous price.

8. Is the bidder entitled to modify other terms of the offer?

The bidder is generally entitled, within certain time frames, to modify other terms of the offer, such as the minimum number of shares to be purchased, the number and timing of transactions in the course of the offer or rules for placing orders.

9. Is the bidder entitled to withdraw the offer?

The bidder is generally not entitled to withdraw the offer. Exceptions apply if a competing offer is announced.

10. May a mandatory offer be submitted in the form of a share/paper offer?

— A non-cash offer is permissible in creeping-in scenarios and when a mandatory offer for 66% of the voting rights is made, provided that the shares in the offer are purchased in return for dematerialised shares in another company (i.e. non-document bearer shares, recorded on a security account), dematerialised depository

receipts, dematerialised mortgage bonds or bonds issued by the Polish State Treasury.
- In the context of a mandatory offer for 100% of the voting rights, a non-cash offer is only permissible as an alternative to a cash offer and only provided that the shares in the offer are purchased in return for dematerialised shares of another company or other dematerialised and transferable securities giving voting rights.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

Polish law does not provide for any clear rules in this respect. Generally, the obligation to make a public announcement of an intention to launch an offer by a bidder that is not a public company arises when circumstances which give rise to an obligation to make an offer (acquisition of a given stake) arise. A bidder that is a public company is obliged to announce its intention to launch an offer under general rules regulating disclosure of inside information.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

There are no particular regulations or case law governing the admissibility of due diligence in relation to a public target based on non-public information. Advice needs to be obtained on a case by case basis. The prevailing view is that the bidder may carry out a due diligence relating to the target company under the following circumstances:
- the target's management may permit the bidder to perform due diligence only after a non-disclosure agreement is executed;
- the target's management is under a general obligation to keep sensitive information confidential;
- prior to an announcement of the bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

There are no particular regulations or case law in relation to this. In practice, however, the following deal protection measures apply:
- pre-launch stake building by a bidder will generally be permissible under takeover law and insider regulations (but may trigger a requirement to disclose the bidder's intention to launch a bid);
- irrevocable undertakings of shareholders are generally permissible, but may lead to "acting in concert";
- protective undertakings in favour of a particular bidder are only permissible if they are in the target's best interest (board neutrality rule).

14. What provisions exist relating to board neutrality?

There is no case law in relation to this. The prevailing view is that the board neutrality rule exists in Polish takeover law. Examples of the board neutrality rule are as follows:
- the board must give an opinion on the announced offer and the offer price;
- the board must obtain the prior authorisation of the general meeting before taking any action which may result in frustration of the mandatory offer for 100% of shares (if the target's articles of association contain such an obligation).

15. What conditions are permissible for mandatory offers?

In certain cases, the offer may include conditions relating to:
- certain resolutions to be made by the target's governing bodies;
- results of other, already announced, offers;
- the target's execution of certain agreements;
- a minimum acceptance threshold.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

No. Once the mandatory offer is announced, the bidder and parties acting in concert cannot directly or indirectly acquire shares outside the offer until completion of the offer.

17. When and in what form does the financing of the offer have to be secured?

A bidder must establish collateral securing 100% of the value of the shares subject to the offer prior to announcing the tender offer, i.e. prior to notifying the Financial Supervision Authority and the Warsaw Stock Exchange about the offer. Polish law does not provide for the exact form of the collateral, but requires that establishment of the collateral is certified by a bank or other financial institution. Usually, financing is secured in the form of a deposit or bank guarantee.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

Yes. The bidder must appoint a broker whose role is to announce and conduct the offer on behalf of the bidder.

19. What are the regulatory fees for takeover proceedings?

The regulatory fees include:
- broker's fees (privately negotiated);
- newspaper announcement fees (privately negotiated);
- National Depository for Securities' fees in an amount depending on the number of transactions that are concluded by the bidder and the shareholders as a result of the offer (approximately EUR 2 per transaction).

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of all or part of the voting rights of the bidder, the bidder's direct or indirect subsidiaries, dominant entities or parties acting in concert;
- statutory prohibition of acquisition of shares outside the offer by the bidder, the bidder's direct or indirect subsidiaries, dominant entities or parties acting in concert until a mandatory offer is made;
- administrative fines ranging up to PLN 1,000,000 (approximately EUR 250,000);
- possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

To conduct a squeeze-out in a public company, a minimum of 90% of the target's voting rights is required. For calculating the 90% threshold, votes of the subsidiaries, dominant entities and parties acting in concert are taken into account.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Not applicable.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The time limit for announcing a squeeze-out is three months after crossing the 90% threshold;
- the minimum purchase price is generally established in accordance with the rules described in point 6 above;
- the period for payment of the purchase price is 30 days;
- intermediation of a broker is required;
- notification to the Financial Supervision Authority and the Warsaw Stock Exchange is required;
- withdrawal from the announced squeeze-out is prohibited.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

The shareholders of the public company are entitled to a sell-out in the following circumstances:
- a majority shareholder must hold at least 90% of the voting rights (subsidiaries, dominant entities and parties acting in concert are taken into account);
- the sell-out right must be exercised within three months after the majority shareholder has passed the 90% threshold;
- the minimum purchase price rules for offers apply.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Romania

Claudia Popescu, claudia.popescu@cms-cmck.com
Horea Popescu, horea.popescu@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

Holding directly or indirectly, more than 33% of the voting rights in a public company, as a result of a person's own acquisitions or acquisitions by parties acting in concert with such person.

2. What are the principal exemptions from the mandatory offer requirement?

— Mandatory offer requirements do not apply if the holding exceeding 33% of the voting rights was obtained:
1) during a privatisation process;
2) through share acquisitions from the Ministry of Public Finance or from other competent entities carrying out an enforcement procedure for budgetary receivables (where a creditor enforces the sale of the assets (including the listed shares) of its debtor to recover its receivables);
3) following the transfer of shares between a parent company and its subsidiaries or between subsidiaries of the same parent company;
4) following a voluntary public takeover offer made to all holders of target securities, for all their holdings.

— Where the threshold exceeding 33% of the voting rights is reached unintentionally, the shareholder must, within 3 months, either: a) make a mandatory public offer; or b) sell the portion of his shares that exceeds the 33% threshold. The following operations are considered to result in unintentional exceeding of the 33% threshold:
1) a decrease in the share capital of a company by the redemption of its own shares, followed by the cancellation of such shares;
2) the exercise of pre-emptive rights, subscription or conversion of rights initially allotted, as well as the conversion of preferred shares into ordinary shares; or
3) a merger/spin-off or succession.

3. What actions amount to "acting in concert" and what are their consequences?

— Persons acting in concert are defined as two or more persons, linked by a written agreement or by a gentlemen's agreement to implement a common policy with respect to a public company. Certain persons are presumed to act in concert, including, but not limited to:
- involved persons, defined as a) persons that control or are controlled by a public company or that are under joint control; b) persons entering into agreements to jointly obtain or exercise voting rights, if the shares subject to such agreement grant a controlling position; c) natural persons who are part of the public company's control and management bodies; d) spouses and certain relatives of the natural persons referred to above; e) persons entitled to appoint the majority of board members;
- a company and its subsidiaries, as well as any subsidiaries amongst themselves;
- a company with its board members and with persons mentioned above, as well as these persons amongst themselves.

— The main consequences of parties acting in concert include:
- shareholdings of parties acting in concert are aggregated to determine whether the 33% threshold is exceeded (which would trigger a mandatory offer);
- the price paid by parties acting in concert for shares in the target (within a 12-month period prior to a mandatory offer) is taken into account

when calculating the minimum price that must be offered in a mandatory offer.

4. What actions amount to "creeping-in", and what are their consequences?

Romanian capital markets legislation does not contain a provision relating to "creeping-in".

5. How long does it take to complete a mandatory offer?

— A mandatory offer would take at least seven weeks to complete after submission of the offer documents to the National Securities Commission **("CNVM").** Such term could be materially extended if a) the offer period exceeds the minimum period of 15 business days (see details below) or b) CNVM requires additional information or clarifications.

— Principal stages of the offer process:
1) Preparing the offer documents (including an offer prospectus).
2) Submitting the offer documents to CNVM within two months after exceeding the 33% threshold.
3) Approval by CNVM of the offer prospectus, within ten business days after its submission (unless additional documentation or clarifications are requested by CNVM).
4) Publication of the offer announcement in two national newspapers, submitting the prospectus to the stock exchange and making the prospectus publicly available.
5) At least three business days after step 4), but within ten business days after step 3), the offer period begins. The offer period lasts at least 15 business days and up to a maximum of 50 business days, at the bidder's discretion.
6) Settlement and clearing of the offer through the stock exchange system.
7) Submission by the broker of a report on the results of the offer to CNVM and the stock exchange.

6. What are the factors impacting the minimum price of an offer?

— The price to be offered in a mandatory public takeover offer must be at least equal to the price paid by the bidder (or parties acting in concert with the bidder) for shares in the target during the 12-month period prior to the offer. If this is not applicable (or if CNVM considers that the respective transactions in the preceding 12 months may influence the accuracy of the price), the offer price must be at least equal to the highest of:
  - the average weighted traded price during the 12 months prior to submission of the offer documents to CNVM;
  - the net asset value per share of the target according to its latest financial statements;
  - the value of the target shares based on a valuation made by an independent appraiser in accordance with international valuation standards.

— The values mentioned at the points above are calculated by an independent appraiser registered with CNVM and appointed by the bidder.

7. May the bidder modify the offer price?

— The bidder may only increase the offer price, subject to the fulfilment of certain conditions (as described below);

— specific provisions apply to modifications of the offer price in the event of competing bids. A competing bid can be made within a maximum of ten business days from the publication of the offer announcement, at a price at least 5% higher than the offer price. If a competing bid is made, CNVM will suspend the mandatory offer and the competing bid and will establish when the bidder and the competing bidder may submit amendments to the offered price. On the date of the expiry of that period, CNVM will organise an auction between the bidder and the competing bidder regarding the increase of the price offered. The auction will be carried out in bid sessions with increases of the respective offer price of at least 5%. Only the offer made by the winning party is allowed to proceed.

8. Is the bidder entitled to modify other terms of the offer?

— The bidder is entitled to modify the terms of the offer provided that:
  - the amendment is approved by CNVM;
  - the amendment does not result in less favourable terms (compared to the initial ones); and
  - an announcement with respect to the amendment is brought to the attention of the target shareholders in the same way as the offer prospectus.

9. Is the bidder entitled to withdraw the offer?

No. The offer is irrevocable throughout the offer period.

10. May a mandatory offer be submitted in the form of a share/paper offer?

The price offered in a mandatory offer can be expressed in a) cash, b) securities or c) a combination of both cash and securities. If the bidder offers securities, he must also provide a cash alternative. Investors are entitled to choose whether to receive either the cash or the securities.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

The bidder must make a public announcement regarding the offer after the approval by CNVM of the offer prospectus.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

Romanian legislation has no specific provisions in this respect. Consequently, the legal provisions regarding inside information and related restrictions apply. Therefore, inside information should not be disclosed during a due diligence and should not be used to acquire or sell (directly or indirectly) shares in the target.

13. What deal protection measures may a bidder implement?

There are no specific legal provisions or established case law relating to deal protection measures in a mandatory public offer.

14. What provisions exist relating to board neutrality?

Applicable legislation does not contain provisions relating to the neutrality of the board of a public company in the case of a mandatory offer. Certain such provisions are applicable for voluntary offers.

15. What conditions are permissible for mandatory offers?

Although there are no specific legal provisions, it can be argued that mandatory offers cannot be subject to conditions, except for merger clearance.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

— After the submission of the offer documents to CNVM and until the initiation of the offer, the bidder or persons acting in concert with the bidder cannot perform any operations with respect to the shares that are subject to the offer.
— After the initiation of the offer, the bidder (and any person acting in concert with the bidder) is allowed to acquire shares outside the offer, providing that the following cumulative conditions are met: a) the price paid outside the offer is higher than the price offered in the mandatory offer; and b) the shares purchased outside the offer are purchased at least eight business days before the closing of the offer. The bidder must increase the price of the offer to at least the highest price paid by the bidder outside the offer. The amendment of the price must be approved by CNVM.

17. When and in what form does the financing of the offer have to be secured?

The offer documents that must be submitted to CNVM prior to approval of the offer must include: a) proof of deposit by the bidder of at least 30% of the value of the offer in a bank account of the broker (such amount being blocked throughout the offer period) or b) a bank guarantee covering the entire value of the offer, issued for the benefit of the broker.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

Independent valuators must be involved in the offer process for the purpose of calculating the minimum price to be offered, but only if a) the bidder or parties acting in concert with the bidder have not acquired shares in the target within a 12-month period prior to the offer, or b) even if they acquired shares within the 12 months preceding the offer, CNVM considers that these transactions may influence the accuracy of the price.

19. What are the regulatory fees for takeover proceedings?

- Prior to submission of the offer documents to CNVM, the bidder must pay CNVM an initial fee of 1% of the total value of the offer, as provided in the offer prospectus.
- After completion of the offer, the bidder must pay CNVM (if applicable) the difference between an adjustment fee (calculated as detailed below) and the initial fee mentioned above. The adjustment fee amounts to 1.8% of the value of the offer, determined by multiplying the offer price by the difference between the number of shares owned by the bidder (or parties acting in concert) after completion of the offer and the number of shares owned by the bidder (or parties acting in concert) when the offer was initiated.
- The regulatory fees are frequently subject to amendments.

20. What are the legal consequences of a failure to make a mandatory offer?

- The voting rights of the bidder (and of parties acting in concert with the bidder) relating to the shares exceeding the 33% threshold are suspended until a mandatory offer is made.
- The bidder (and parties acting in concert with the bidder) cannot acquire target shares other than through a mandatory offer.
- Generally, a failure to observe legal provisions in the capital markets field represents a contravention. Sanctions include fines amounting to e.g. a) between 0.5% and 5% of the share capital for legal persons; or b) between RON 500 (approximately EUR 117) and RON 5,000 (approximately EUR 1,170) for natural persons.
- Generally, CNVM may also apply sanctions to certain natural persons (e.g. directors, legal representatives, members of the management bodies of a legal person) who did not prevent the contravention, although they could have done so and were obliged to prevent it. Such natural persons may be held liable for damages caused by the contravention.

21. What shareholding is generally required for a squeeze-out?

A squeeze-out may only be performed if, following a public offer made to all shareholders for all their holdings, the purchaser: a) acquires shares representing more than 95% of the share capital (and voting rights) in the target; or b) acquires (by means of the offer) shares representing more than 90% of the shares with voting rights targeted by the offer.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A squeeze-out may only be performed following a public offer made to all shareholders for all their holdings if the above thresholds are met.

23. What other legal requirements need to be observed in the context of a squeeze-out?

The main legal requirements are as follows:

- a squeeze-out may only be performed within three months after the completion of a public offer made to all shareholders for all their holdings (if the above thresholds are met);
- CNVM must approve a squeeze-out announcement (which is subsequently published);
- the price offered in a mandatory offer or in a voluntary offer pursuant to which the bidder acquired shares representing more than 90% of the shares with voting rights is considered adequate and may be used in the squeeze-out procedure. Otherwise, the price to be offered in a squeeze-out is calculated by an independent expert, in accordance with international valuation standards;
- the broker must effect payment of the squeeze-out price to each minority shareholder in the manner indicated by the shareholders. If shareholders do not communicate to the broker their chosen payment arrangements, payment is sent by registered letter with confirmation of receipt;
- all amounts returned to the broker must be deposited in a bank account. Shareholders who did not receive the squeeze-out price can withdraw the relevant amounts from the bank account at any later date.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

Within three months after the completion of a public offer made by a bidder to all the shareholders for all their holdings, minority shareholders are entitled to request that the bidder (provided he owns more than 95% of the share capital) purchase their shares at a fair price (calculated as briefly described below).

25. What other requirements need to be observed in the context of a sell-out?

The main requirements are as follows:

- CNVM must approve a sell-out announcement.
- The price offered by the bidder in a mandatory offer (or in a voluntary offer following which the bidder acquired shares representing more than 90% of the shares with voting rights) is considered adequate and may be used in the sell-out procedure. Otherwise, the price to be paid in a sell-out is calculated by an independent expert, in accordance with international valuation standards.
- The price must be paid to the minority shareholders within six business days after receipt of the announcement by the bidder, in the manner indicated by the minority shareholders.

Russia

John Hammond, john.hammond@cmslegal.ru
Andrey Zavalishin, andrey.zavalishin@cmslegal.ru

1. What transactions/actions generally trigger a mandatory offer?

- **Acquisition of more than 30%** of the voting shares of an open joint stock company;
- **acting in concert** by affiliated parties acquiring an aggregate shareholding of more than 30% of voting shares of a target company;
- **creeping-in.**

2. What are the principal exemptions from the mandatory offer requirement?

- Acquisition of shares during formation or reorganisation;
- acquisition of shares on the basis of an earlier voluntary or mandatory offer to acquire all shares;
- transfer of shares between affiliated persons, or as a result of the division of joint property between spouses or as a result of the division of jointly inherited property;
- redemption of shares;
- acquisition of shares as a result of the exercise by a shareholder of his preemptive right to the acquisition of additionally issued shares;
- acquisition of more than 30% of shares in a joint stock investment fund established in accordance with Russian Federal Law No. 156-FZ "On investment funds", dated 29 November 2001.

3. What actions amount to "acting in concert" and what are their consequences?

- "Acting in concert" can be defined as joint acquisition of shares by a person and his affiliates;
- the general requirements for a mandatory offer will apply if the aggregate shareholding of parties acting in concert exceeds 30%.

4. What actions amount to "creeping-in", and what are their consequences?

- Acquisition of shares exceeding 50% and 75% of the shares in the target will trigger a mandatory offer requirement;
- the general requirements for a mandatory offer will apply.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require about four months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
- Principal stages of the offer process:
  1) Filing of the offer documents with the territorial division of the Financial Service for Financial Markets (the **"FSFM"**) within 35 days after the bidder's name is entered in the target's register of shareholders (or from the moment when the bidder knew or should have known about his acquisition of the shares).
  2) Submission of the offer documents to the target (upon expiration of 15 days after filing of the offer documents with the FSFM).
  3) Sending of the offer documents to the shareholders by the target (15 days after the target received the offer documents).
  4) Offer period of 70–80 days after receipt by the target of the offer documents.
  5) Transfer of the shares to the bidder and settlement.
  6) Sending of the report by the bidder to the target and the FSFM (15 days after the end of the offer period).

6. What are the factors impacting the minimum price of an offer?

The minimum price is the higher of a) the **average** volume-weighted stock market **share price** of the target's shares during the **six-month** period preceding the date of filing of the offer documents with the FSFM, and b) the **maximum consideration** paid or committed to be paid by the bidder (or parties acting in concert) for target shares in past transactions during a **one-year** period preceding filing of the offer documents.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price.

8. Is the bidder entitled to modify other terms of the offer?

The bidder may **only decrease** the time period for settlement of the offer price.

9. Is the bidder entitled to withdraw the offer?

The bidder is not entitled to withdraw a mandatory offer.

10. May a mandatory offer be submitted in the form of a share/paper offer?

A non-cash offer is **only** permissible **as an alternative** to a mandatory cash offer.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

Filing of the offer documents with the territorial division of the FSFM.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

The target's management is under a general obligation to keep sensitive information confidential.

13. What deal protection measures may a bidder implement?

There are no developed regulations relating to deal protection measures.

14. What provisions exist relating to board neutrality?

Upon receipt by the target of the mandatory offer, the target's board must issue recommendations in relation to the mandatory offer, including assessment of the offer price and possible alteration of the market value of the target shares after acquisition, and an assessment of the bidder's plans in relation to the target and its employees.

15. What conditions are permissible for mandatory offers?

Mandatory offers may be subject to statutory conditions (e.g. merger clearance, regulatory approvals).

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may not acquire target shares on terms different from the offer terms.

17. When and in what form does the financing of the offer have to be secured?

The offer must be accompanied by an irrevocable bank guarantee securing the bidder's obligation to pay for the target shares.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

An independent appraiser should be involved in order to determine the purchase price for the target shares, unless the purchase price is determined on the basis of quotations for the target shares on stock exchanges for the preceding six months.

19. What are the regulatory fees for takeover proceedings?

There are no regulatory fees for takeover proceedings.

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of the voting rights of the bidder (and parties acting in concert) until a mandatory offer is made;
- administrative fines ranging from EUR 25 to EUR 13,000;

— possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

Over 95% of the target company's voting shares.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Acquisition by the bidder of more than 95% of the affected shares through a voluntary or mandatory offer.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The adequacy of the consideration (squeeze-out price) must be reviewed by an independent appraiser.
- The supervisory board (board of directors) of the target must adopt a squeeze-out recommendation.
- Settlement of the squeeze-out price must take place not later than 15 days after transfer of the target shares.
- Payment of the squeeze-out price must be secured by a bank guarantee.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

In the event of a) a voluntary or mandatory offer; b) a squeeze-out offer (i.e. a voluntary offer where the bidder has obtained more than 95% of the voting shares); c) a squeeze-out demand (where the bidder has obtained more than 95% of the voting shares under the terms of the offer, shareholders of the target may sell their shares within a sell-out period of six months).

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Serbia

Radivoje Petrikić, radivoje.petrikic@cms-rrh.com
Marija Tešić, marija.tesic@cms-rrhs.com

1. What transactions/actions generally trigger a mandatory offer?

- In line with the Serbian Takeover Act **("TA"),** a mandatory offer must be launched:
  - a) if a person intends to acquire (in aggregate) shares in excess of 25% of the total voting rights in the target;
  - b) if a person who has acquired (in aggregate) less than 75% of the total voting rights by way of a takeover offer intends to acquire any additional shares in the target; and
  - c) if a person who has acquired (in aggregate) shares in excess of 75% of the total voting rights by way of a takeover offer a) acquires additional shares in the target representing at least 5% of the total voting rights, or b) acquires over a period of 18 consecutive months additional shares in the target representing at least 3% of the total voting rights.
- Shareholdings of related persons and/or parties acting in concert have to be taken into account to determine whether a mandatory offer threshold has been exceeded.
- Scope of the TA: the target is a public joint stock company incorporated under the laws of the Republic of Serbia **("RS"),** with shares traded on the Belgrade Stock Exchange **("Belex").**

2. What are the principal exemptions from the mandatory offer requirement?

- The acquirer of a controlling interest is exempted from the mandatory offer requirement if the shares are acquired:
  1) through inheritance;
  2) through division of joint marital property;
  3) on a temporary basis only, while engaging in the acquirer's registered business activity of issuing or reselling securities on the market (provided that the voting rights conferred by such shares are not exercised);
  4) in a bankruptcy proceeding of the target;
  5) in a merger in where only one of the companies involved in the merger holds shares in the target;
  6) through a change in the legal status of a company;
  7) from another legal person whose shareholders are, directly or indirectly, the same persons or through a transfer for the purpose of restructuring within a holding;
  8) in a new company that was created by merger or split-off of existing (listed) companies, provided that rights of dissenting shareholders of remaining companies are protected;
  9) only to secure claims of the acquirer against the company, provided that voting rights attached to the acquired shares are not exercised;
  10) by the RS (i.e. persons with whom RS acts in concert and who have the status of a professional investor pursuant to the law regulating the securities market);
  11) before the TA became applicable.
- The TA does not apply to trading in securities (by public offer or on a regulated market) of companies whose shareholders are particular RS funds; specifically, shares that were transferred to the Shares Fund (a financial institution of RS, and a legal holder of non-sold shares in companies that were privatised), and the shares of individual shareholders which are offered on sale at the same time as the shares of the Shares Fund, or shares whose legal holders are the Republic Fund for Pension and Disability Insurance of Employed Persons or the Republic Development Fund or RS.

3. What actions amount to "acting in concert" and what are their consequences?

— It is considered that parties "act in concert" if they agree, orally/in writing/tacitly, to cooperate for the purpose of acquiring shares or voting rights in the target or holding shares on behalf of the other party.
— Parties also act in concert if one of them, directly or indirectly, controls the other(s) by a) holding, directly or indirectly, 25% or more equity or voting rights, b) having management rights, or c) having a decisive influence (including companies managing one or more investment funds).
— Companies are deemed to act in concert if they are considered "related persons" in the sense of the Companies Act **("CA").**
— Natural persons are considered to act in concert if they are the spouse, parents, descendants, custodian/foster child, or relatives up to the third degree in collateral line (including in-laws) of a person.

4. What actions amount to "creeping-in", and what are their consequences?

See point 1 b) and c) above.

5. How long does it take to complete a mandatory offer?

— The takeover process itself lasts approximately between two and three months (including possible extensions of the offer period).
— Principal stages of the offer process:
1) Action: notification of the bid addressed by the bidder to the Securities Commission **("SEC"),** Belex and the target.
Timeframe: on the date the obligation to make a mandatory offer arises (i.e. when the threshold is exceeded).
2) Action: publication of the intention to launch a mandatory bid for the target in a daily newspaper with a circulation of at least 100,000.
Timeframe: within one business day.
3) Action: filing of the request for approval of the offer documents with the SEC.
Timeframe: within one business day after the obligation to make a mandatory offer arises.
4) Action: SEC approval of the offer.
Timeframe: two business days from the date of filing of the request for approval.
5) Action: publication of the short form of the offer documents in a daily newspaper with circulation of at least 100,000.
Timeframe: one business day following the date of receipt of SEC approval.
6) Action: opinion of the target's managing board on the offer.
Timeframe: within seven days from the date of publication.
7) Action: depositing of the shares in a share deposit account by shareholders of the target.
Timeframe: during the offer period (minimum 21 days; maximum 45 days). Possible extensions in the case of competing bids or amendments of the offer up to a maximum of 70 days.
8) Action: payment of the purchase price to shareholders/transfer of shares through the Central Registry.
Timeframe: within three business days from the end of the offer period.
9) Action: publication of a report on the takeover in a daily newspaper with a circulation of at least 100,000.
Timeframe: one business day from the end of the period for payment of the purchase price.

6. What are the factors impacting the minimum price of an offer?

The offer price per share must be at least equal to the higher of:
— the weighted price per share during a period of three months prior to publication of the intention to launch a bid; or
— the last market price per share on the trading day immediately preceding the day of publication of the intention to launch a bid; or
— the highest price per share paid by the bidder at any time during a period of 12 months prior to the publication of the intention to launch a bid; or
— the average price per share paid by the bidder during a period of 2 years prior to the publication of the intention to launch a bid, provided that the bidder has acquired at least 10% of the target shares during this period.

7. May the bidder modify the offer price?

The bidder may only increase the offer price.

8. Is the bidder entitled to modify other terms of the offer?

- The offer may only be improved (by increasing the price or withdrawal of conditions). The bidder is obliged to file a request for amendment of the offer with the SEC at least three working days before the end of the offer period.
- If amendments are made to the offer, the offer period will be extended for seven days (the aggregate offer period may not exceed 60 days – except in the case of a competing bid, where the maximum offer period is 70 days).

9. Is the bidder entitled to withdraw the offer?

An offer may be withdrawn only in the following events: a) launch of a competing bid with higher offer price, or b) bankruptcy of the target.

10. May a mandatory offer be submitted in the form of a share/paper offer?

The offer price may be paid in cash in RSD (local currency) and/or securities. If the offer is made for shares of the Shares Fund of RS, the price can be paid in cash only.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- Circumstances which give rise to an offer obligation;
- a person that has not acquired 25% of the voting shares in the target is not under a duty to announce a takeover offer; however, if such intention is announced, the bidder must comply with the provisions of the TA ("voluntary offer").

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

Not regulated.

13. What deal protection measures may a bidder implement?

Not regulated.

14. What provisions exist relating to board neutrality?

- The target's management is under a general obligation to act in the target's best interest during the takeover process, and to ensure that the takeover is accomplished within the shortest possible time, so the target's business operations are not interrupted. The target's management is prohibited from causing disruption that would affect the price for shares.
- After the offer is announced, any person (including management) is prohibited from directly or indirectly (through public media) influencing the target shareholders by promising gifts, services, property or any other benefits.
- Misuse of privileged information is a criminal offence.
- From the announcement of notification of an offer until completion of the takeover process, the target's management is not allowed, without the prior approval of the shareholders' meeting, to:
  - increase the share capital by issuing new shares;
  - adopt decisions on extraordinary matters or enter into agreements that would cause significant changes to the target's assets or liabilities;
  - adopt decisions on acquisition or disposal of its own shares;
  - announce an offer relating to the shares of another company;
  - provide limitations referring to the number of votes of voting shares in the articles of association.

15. What conditions are permissible for mandatory offers?

Only voluntary offers may be subject to conditions imposed by the bidder.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- In the period between the announcement and the end of the offer period, the bidder (or parties acting in concert) may not acquire (or agree to acquire) target voting shares. The bidder may also not dispose (or agree to dispose) of target shares.
- Between the announcement of the offer and the announcement of the results of the offer, target shares held by the bidder (and persons acting in concert) do not have voting rights.

17. When and in what form does the financing of the offer have to be secured?

Prior to filing the request for approval of the offer with the SEC, the bidder must provide evidence of securing the aggregate offer price in any of the following forms:

- cash deposited in a special purpose account open with a Serbian bank (or the equivalent number of securities deposited in a special securities account maintained with the Central Registry); or
- a loan agreement entered into by the bidder and a Serbian bank; or
- an unconditional and irrevocable bank guarantee, on first demand, issued by a Serbian bank and valid for the payment period (three business days after the end of the offer period) plus an additional five days.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

Prior to filing the request for approval of the offer with the SEC, the bidder must open a special securities account at the Central Registry via an authorised member of the Central Registry (a bank or brokerage company).

19. What are the regulatory fees for takeover proceedings?

For the approval of a takeover offer and amendments by the SEC, a fee of 0.35% of the total offer price but not less than RSD 40,000 (approximately EUR 400) applies.

20. What are the legal consequences of a failure to make a mandatory offer?

- Fines in the range of:
  - RSD 1,000,000 to 3,000,000 (approximately EUR 10,000 to 30,000) for legal entities;
  - RSD 100,000 to 200,000 (approximately EUR 1,000 to 2,000) for a responsible person within a legal entity;
  - RSD 30,000 to 50,000 (approximately EUR 300 to 500) for a natural person.
- If a person under a duty to announce an offer fails to announce the offer within the imposed time period, SEC will either:
  - order that person to announce the offer; or
  - (if a person has no funds to finance the offer) order the sale of an appropriate number of shares (so that the total number of shares held does not exceed 25%) within three months. The SEC will inform the Central Registry that such shares carry no voting rights (until they are sold).

21. What shareholding is generally required for a squeeze-out?

95% of the target shares.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Please refer to points 21 and 23.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The squeeze-out must be performed under the same terms and conditions as the offer;
- the offer for acquisition of the remaining shares needs to be submitted and notification of the squeeze-out must be announced (in a daily newspaper) 120 days after the end of the offer period at the latest;
- after 15 days have elapsed following the announcement, at the bidder's request, the Central Registry will undertake appropriate transfers of shares and the price paid.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

If the bidder has acquired at least 95% of the target shares, the remaining shareholders can request a sell-out.

25. What other requirements need to be observed in the context of a sell-out?

- The sell-out needs to be performed under the same terms and conditions as the offer.
- The shareholders' request for a sell-out must be addressed to the bidder within 6 months after the acquisition of 95% of the shares.
- The sell-out must be performed at the price that was paid for the last share (of the acquired 95%).
- A bidder who has acquired 95% of the shares needs to ensure the availability of funds (cash, bank guarantee) for payment of the remaining 5%.

Slovakia

Peter Šimo, peter.simo@cms-rrh.com
Jana Pagacova, jana.pagacova@rc-cms.sk

1. What transactions/actions generally trigger a mandatory offer?

- Direct or indirect control through **acquisition of more than 33%** of the voting rights;
- **acting in concert** by parties with an aggregate shareholding of more than 33% of the voting rights.

2. What are the principal exemptions from the mandatory offer requirement?

The acquirer of a controlling interest is **exempted** from the mandatory offer requirement if:
- he acquired the controlling interest through a takeover offer made in accordance with the Slovak Securities Act and the offer was not subject to a minimum acceptance condition;
- a legal successor only enters into the rights and obligations of a shareholder of the target and does not increase his voting share in the target;
- he does not increase his share in the voting rights as a result of his purchase of a business or part of it;
- shares are transferred among persons acting in concert provided that their total voting rights in the target do not change (i.e. no change of control but intra-group restructuring).

3. What actions amount to "acting in concert" and what are their consequences?

- "Acting in concert" is defined as **jointly seeking or exercising control of the target** or cooperating with the target to prevent takeover.
- **Shareholdings** of parties acting in concert are **aggregated.**
- All **parties acting in concert** with the acquirer of control are **jointly and severally liable** for the offer price.

4. What actions amount to "creeping-in", and what are their consequences?

No creeping in provisions apply.

5. How long does it take to complete a mandatory offer?

- The takeover process from the preparation of the offer documents until the end of the acceptance period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
- Principal stages of the offer process:
  1) Notification of the obligation to launch a mandatory offer to the target and the National Bank of Slovakia **("National Bank")** without undue delay and publication in the relevant daily press.
  2) Selection of an expert for calculation of appropriate compensation for shares by the National Bank and preparation of an expert valuation report, if a relevant existing expert opinion cannot be used (no time period is specified for selection of an expert and preparation of the expert opinion).
  3) Filing with the National Bank of the offer documents within ten days after publication of the notification, or within ten days after preparation of the expert opinion.
  4) Approval of the offer documents by the National Bank within ten days after filing (if no further amendments are required or if the proceeding is not interrupted).
  5) Publication of the approved offer documents in the relevant daily press without undue delay; as of the day of publication, the offer becomes effective and the offer period commences (the offer period must be at least 30 calendar days and no longer than 70 calendar days).

6) Publication of the results of the offer after the end of the offer period.

6. What are the factors impacting the minimum price of an offer?

— The **(minimum) price** cannot be lower than a) the highest consideration paid by the bidder (or parties acting in concert) for target shares in past transactions during the one-year period preceding the obligation to declare the offer, b) the consideration determined by the expert opinion, and c) the net asset value per share according to the last financial statements verified by an auditor before the obligation to declare a mandatory offer arose.
— In the case of a mandatory offer for **listed shares,** the **(minimum) price** cannot be lower than the average share price during the one-year period preceding the obligation to make a mandatory offer.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price (the increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

— A mandatory offer may be modified (repeatedly) only if this possibility is expressly stated in the offer document and if statutory conditions are met. A modification of the offer terms may only be made for grounds outside the discretion of the bidder (or parties acting in concert).
— Terms of a mandatory offer may always be improved (improvements will also apply retroactively to acceptances).

9. Is the bidder entitled to withdraw the offer?

— Only voluntary offers may be withdrawn;
— a mandatory offer cannot be withdrawn.

10. May a mandatory offer be submitted in the form of a share/paper offer?

The consideration in a mandatory offer may be provided in the form of a) cash, b) securities, or c) a combination of the two. If the bidder offers consideration in the form of securities, a cash alternative must be provided.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— A decision of the bidder's supervisory and management boards (or equivalent corporate bodies) to make a voluntary offer; or
— circumstances which give rise to a mandatory offer obligation (acquisition of control).

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to keep sensitive information confidential.
— Between the offer notification and the publication of the offer results, the target's management is not allowed to take any measures or perform any actions, except for negotiation of more advantageous conditions for the offer and calling for a competitive offer.

13. What deal protection measures may a bidder implement?

— There is no established case law relating to deal protection measures.
— Protective undertakings in favour of a particular bidder are only permissible if they are in the target's best interest (board neutrality rule).

14. What provisions exist relating to board neutrality?

— Board neutrality rules apply. (For example: between the offer notification and the publication of the offer results, the target's management is not allowed to take any measures or perform any actions, except for negotiation of more advantageous conditions for the offer and calling for a competitive offer.)
— There is no reciprocity exception for bidders from EU Member States which have not implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

Mandatory offers may be subject to statutory conditions (e.g. merger clearance, regulatory approvals). Mandatory offers can also be subject to a minimum acceptance condition.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may not acquire target shares on terms more favourable than the offer terms, unless the offer is improved simultaneously (possible exception: ordinary trading activities of credit institutions).

17. When and in what form does the financing of the offer have to be secured?

The draft offer documents must already include information on sources and ways of financing of obligations of the bidder resulting from the offer and information on presumed debts of the bidder for this purpose. The National Bank will consider this information in the process of approving the draft offer documents.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- In the case of a mandatory offer, an appropriate consideration for shares must be determined by an expert.
- An expert must be designated from among legal entities that are registered as official experts in the field of economy, business management, pricing and evaluation of businesses.
- The National Bank approves the designated expert in the process of approving the draft offer documents.

19. What are the regulatory fees for takeover proceedings?

- EUR 331.94 for approval of a voluntary takeover bid or a competing takeover bid;
- EUR 995.82 for approval of a mandatory takeover bid;
- EUR 33.19 for approval of withdrawal and modifications to a voluntary takeover bid or to a competing takeover bid, and for approval of modifications to a mandatory takeover bid;
- EUR 1,659.70 for giving consent to exercising of the right of squeeze-out.

20. What are the legal consequences of a failure to make a mandatory offer?

- The National Bank can suspend or prohibit the mandatory offer.
- The National Bank can impose administrative fines on the bidder ranging from EUR 331.94 to EUR 663,978.38.
- Possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

95% of the voting share capital and 95% of the target's voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

After an execution of a takeover offer which was neither partial nor conditional, a simplified squeeze-out can be applied by a bidder if the conditions stated below in section 23. are fulfilled. The squeeze-out is effective only after approval by the National Bank.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The right to a squeeze-out must be exercised not later than three months after the end of the offer period in which the bidder acquired the 95% shareholding.
- The consideration for shares acquired by a bidder through a squeeze-out must be adequate; it is considered adequate if it is equal to the offer price.
- Adequacy of the consideration (squeeze-out price) is to be reviewed by an expert approved by the National Bank.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

After publication of the results of a) a mandatory offer, b) a voluntary squeeze-out offer (i.e. a voluntary offer where the bidder has obtained more than 95% of the voting share capital), or c) a voluntary offer containing a minimum acceptance condition that has been fulfilled, shareholders of the target which have not yet accepted the offer may sell their shares to the bidder under the terms of the offer within an additional sell-out period of three months.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Slovenia

Aleš Lunder, ales.lunder@cms-rrh.com
Ermina Kamenčić, ermina.kamencic@cms-rrh.com

1. What transactions/actions generally trigger a mandatory offer?

— A mandatory offer must be made by a person or persons acting in concert that reach/exceed the takeover threshold, i.e. **acquisition of 25% of the voting rights.**

— A **renewed mandatory offer** must also be made by persons that have reached the additional takeover threshold, i.e. **acquisition of 10% of the voting rights after a completed successful takeover bid procedure.**

— The obligation to make a renewed mandatory offer ceases when **at least 75% of the target's voting shares** have been acquired (the final takeover threshold).

Scope

— The target is a joint-stock company whose shares with voting rights are traded on the regulated market; or

— the target company is a joint-stock company whose **shares are not traded** on the regulated market and which has **at least 250 shareholders or more than EUR 4,000,000 of total capital** (as evidenced by the last annual report).

2. What are the principal exemptions from the mandatory offer requirement?

— Persons who have reached a takeover threshold are not required to make a mandatory offer if this threshold was achieved:
- in a gratuitous transaction between certain relatives;
- by inheritance;
- in a merger or split-up of a joint-stock company by swapping its securities for securities of the legal entity that has been dissolved as a result of merger or split-up, provided that the purpose of the merger or split-up was not the takeover of the target;
- through a transfer of securities from the acquirer to parties acting in concert or to groups of companies after completion of a takeover bid;
- by acquisition of a majority shareholding in the bidder, the purpose of which was not a takeover of the target;
- by acquisition of securities as a contribution in kind upon foundation of the acquirer or by way of capital increase if the acquirer has the status of a holding company (i.e. a company which holds a majority shareholding of one/more legally independent companies and carries out the activities of establishing, financing and managing such companies).

— Persons who have reached the takeover threshold are not required to make a mandatory offer if:
- they have reached this threshold as a result of a reduction of the company's share capital by way of cancellation of shares based on a resolution of the general meeting in the adoption of which they did not take part;
- the share of voting rights of another shareholder or group of shareholders in the target is higher.

3. What actions amount to "acting in concert" and what are their consequences?

— Parties acting in concert act on the basis of an explicit or implicit, oral or written agreement and whose aim is to **acquire or consolidate their control of the target** or to **prevent the acquirer from making a successful mandatory offer.**

— An irrevocable presumption of acting in concert exists between a subsidiary and a controlling company, companies that are subsidiaries of the same controlling company, or a management company and an investment fund managed by the management company.

— **Shareholdings** of parties acting in concert are **aggregated.**
— If persons acting in concert together achieve the takeover threshold, they are **jointly and severally liable** to make a mandatory offer.
— Persons acting in concert are **jointly and severally liable** for the fulfilment of all obligations in the takeover procedure.

4. What actions amount to "creeping-in", and what are their consequences?

— Acquisition of an additional 10% of the voting rights triggers a mandatory offer requirement.
— The obligation to make a new mandatory offer ceases when the acquirer, having already made a successful mandatory offer, acquires at least 75% of the target's voting shares.

5. How long does it take to complete a mandatory offer?

— The takeover process from the preparation of the offer documents until the end of the offer period will require at least three months. Statutory conditions (especially merger control proceedings and state aid notifications) may further delay the process.
— Principal stages of the offer process:
1) Notification of the bidder's intention of launching an offer to the Securities Market Agency **("ATVP"),** the target's management and the Competition Protection Office and publication of the intention within three working days after reaching the threshold.
2) Obtaining the authorisation from ATVP allowing the publication of the offer documents. ATVP must decide within 3–5 working days.
3) Publication of the offer documents not later than 30 days and not earlier than 10 days after publication of the takeover intention.
4) Offer period: not less than 28 days and not more than 60 days from the publication of the offer. The offer period can be extended in certain cases, but only until the expiration of the final deadline (60 days after the date of publication of the first offer).
5) Announcement of the result of the offer within three days after the end of the offer period.
6) Three-month sell-out period.

6. What are the factors impacting the minimum price of an offer?

The (minimum) price must not be lower than **the highest price** at which the bidder acquired securities in the **last 12-month period** prior to publication of the bid.

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price (the increased offer price also applies retroactively to acceptances).

8. Is the bidder entitled to modify other terms of the offer?

Once the offer is published, the bidder may only modify the offer by offering a higher consideration or by introducing a lower acceptance threshold. The bidder may amend the offer not later than 14 days prior to the end of the offer period. Amendments will also apply retroactively to parties that have already accepted the offer.

9. Is the bidder entitled to withdraw the offer?

— The bidder is entitled to withdraw the offer before the end of the offer period if:
  - another bidder launches a competing bid; or
  - circumstances arise which make fulfilment of the bidder's obligations so difficult that the purchase of securities no longer corresponds to the bidder's expectations and it would be unfair to maintain the offer in force.
— A withdrawal right must be specified in the offer documents.

10. May a mandatory offer be submitted in the form of a share/paper offer?

— A bidder may offer securities, issued by the bidder or the bidder's parent company and which meet statutory conditions, instead of the money payment.
— A bidder may also offer securities instead of paying part of the price.
— A bidder may offer securities or money payment as alternatives, giving the holders of securities a right of choice.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- A bidder intending to launch an offer must always make a public announcement.
- If the bidder does not launch an offer after the announcement, he is banned from launching another offer for the same target for one year unless the withdrawal of the bid is approved by ATVP.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- The target's management is under a general obligation to keep sensitive information confidential.
- The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.
- Prior to announcement of bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

- There is no established case-law relating to deal protection measures.
- Pre-launch stake building by the bidder is permissible under takeover law and insider regulations (but triggers a requirement to disclose the bidder's intention to launch a bid).
- Irrevocable undertakings of shareholders generally are permissible, but may establish "acting in concert".
- Protective undertakings in favour of a particular bidder are only permissible if in they are in the target's best interest (board neutrality rule).

14. What provisions exist relating to board neutrality?

- The board neutrality rule from the Takeover Directive has been implemented (i.e. a resolution of the general meeting is required for the performance of certain activities by the company's management or supervisory board).
- There is no reciprocity exception for bidders from EU Member States which have not implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

Mandatory (and voluntary) offers may be subject to statutory conditions only.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may not acquire shares outside the offer from the date of the publication of the offer until the end of the offer period. Any parallel transaction is void.

17. When and in what form does the financing of the offer have to be secured?

- Prior to announcing an offer, the bidder must make a cash deposit (assuming full acceptance of the offer) in a special cash account with Central Securities Clearing Corporation **("KDD")**; alternatively:
- a bidder can secure the financing of the offer with a guarantee issued by a bank established in an EU Member State.
- Issued substitute securities payable as consideration must be deposited with KDD and are blocked.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

A licensed brokerage company (a bank or other investment company that is licensed to perform services relating to securities and other financial instruments in the Republic of Slovenia) is required to carry out the offer on behalf of the bidder.

19. What are the regulatory fees for takeover proceedings?

Minimum fees of EUR 850.80 for the Competition Protection Office.

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of the voting rights of the bidder (and parties acting in concert) until a mandatory offer is made or until the bidder has disposed of sufficient securities that he falls below the takeover threshold.

- Fines ranging from approximately EUR 42,000 to EUR 125,000 for a company and approximately EUR 800 to EUR 4,000 for a responsible person in a company.
- Possible damages claims from shareholders of the target.

21. What shareholding is generally required for a squeeze-out?

90% of the target's voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

- The bidder has acquired 90% or more of all the voting shares with the offer.
- A squeeze-out resolution is adopted by the general meeting within three months after publication of the result of the offer.
- The principal shareholder must offer compensation of such type and amount as it is specified in the offer.
- The squeeze-out resolution must be entered in the court register.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- If the squeeze-out resolution is adopted more than three months after publication of the result of the offer, the cash consideration (i.e. the squeeze-out price) must be reviewed by one or more auditors appointed by the court at the request of the principal shareholder.
- The principal shareholder must prepare a written report for the general meeting.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

- A bidder that has already made a successful takeover bid acquires at least 90% of the target's voting shares.
- Minority shareholders can make a request to the principal shareholder for repurchase of their shares within three months after the announcement of the result of the offer (the sell-out period) and may request compensation of such type and amount as was specified in the offer.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Spain

Carlos Peña, carlos.pena@cms-asl.com
Teresa Minguez, teresa.minguez@cms-asl.com

1. What transactions/actions generally trigger a mandatory offer?

— A mandatory offer is triggered when a listed **company's control is gained.** It must always be launched for 100% of the securities.

— Control is deemed to have been attained by a natural or legal person in any of the following cases:
  - at least 30% of the company's voting-rights are acquired. The following are taken into account: a) direct or indirect acquisitions of shares or securities conferring voting rights; b) shareholders' agreements concluded with the purpose of gaining control of the company **("acting in concert")**; and c) voting rights held by virtue of pledges, usufruct, or any other contractual means.
  - Where a person appoints, within 24 months following an acquisition of shares, a number of directors (added to those already appointed) representing more than 50% of the members of the board.

— **Creeping-in.**

2. What are the principal exemptions from the mandatory offer requirement?

— The Spanish Security Markets Commission **("CNMV")** may exempt a person from the obligation to make a mandatory offer when: i) 30% of the target's voting rights are attained and another person or entity directly or indirectly holds an equal or higher percentage of shares in the target. This exemption is conditional upon a) the other person not reducing his voting rights below that of the exempted person, or b) the exempted person not appointing more than half of the board of members; ii) the control is acquired following a voluntary bid for the entire voting rights, provided that one of the following circumstances occurs: a) the offer has been made at equitable price; or b) it has been accepted by shareholders representing at least 50% of the target's voting rights (excluding those already held by the bidder or parties acting in concert).

— Where the control is acquired indirectly and/or was unanticipated, as a consequence of carrying out other transactions (i.e. with no intention to acquire the control), no offer obligation arises if, within three months, the voting rights are reduced below 30% or a shareholders' agreement providing control over the target is terminated, provided that the voting rights exceeding 30% are not exercised in the meantime and provided that the CNMV approves the exemption from the mandatory offer obligation.

3. What actions amount to "acting in concert" and what are their consequences?

— Two or more persons collaborate by virtue of an agreement, tacit or express, oral or written, with the aim of obtaining control of the target, i.e. establishing on a continuous and stable basis a common policy for the control of the target or intending to influence the target's policy. A presumption of acting in concert exists if the parties have signed an agreement considered as a "shareholders' agreement" under Spanish capital markets law governing the exercise of voting rights and/or restricting or conditioning the transfer of shares.

— Shareholdings of parties acting in concert are aggregated.

4. What actions amount to "creeping-in", and what are their consequences?

— Shareholders holding between **30% and 50%** of the voting rights in the target must launch a **mandatory offer** when the takeover regulations come into effect, whenever one of the following circumstances occurs:
  - acquisition of at least 5% of the target's voting rights within a 12-month period;
  - shareholders attain a percentage of voting rights equal to or higher than 50%;
  - acquisition of additional voting rights and subsequent appointment of a number of directors representing (together with those already appointed) more than half of the members of the board of directors. Directors representing other shareholders and independent directors are not taken into account.

— After the takeover regulations come into effect, shareholders acquiring a percentage of voting rights in the target of between 30% and 50% are exempted from the obligation to launch a mandatory offer.

5. How long does it take to complete a mandatory offer?

— The takeover process will require at least three months; there are many factors that may delay the process.

— Principal stages of the offer process:
1) Announcement.
2) Presentation of the request for authorisation: 1 month.
3) Admission: 7 working days.
4) Authorisation: 1 – 3 months.
5) Advertising and publishing of the offer: 5 working days.
6) Beginning of the offer acceptance period: 15 – 17 days.
7) Issuing of a report by the target's board of directors: 10 days.
8) End of the offer period: 5 working days.
9) Publication of the result of the offer: 2 working days.

(APPROXIMATE) TOTAL:
3 – 5 months (maximum)

6. What are the factors impacting the minimum price of an offer?

— Mandatory bids must be made at an **"equitable price".**

— An **"equitable price"** is the highest price paid or agreed by the bidder or persons acting in concert within a 12-month period prior to the announcement of the bid.

— If the bid is made without any acquisitions of target shares in the preceding 12 months, the rules governing delisting bid prices will apply, which mean that the price offered must be the highest between that calculated in accordance with the rules on "equitable price" and that resulting of the use of the methods of calculation: a) theoretical accounting price; b) liquidation value; c) average weighed price for the last six months; d) amount of the consideration previously offered; e) any other commonly accepted pricing methods (cash flow deductions, multiples, comparable transactions and similar methods).

7. May the bidder modify the offer price?

The bidder may **only increase** the offer price.

8. Is the bidder entitled to modify other terms of the offer?

Terms of the offer may only be improved provided that such improvement applies equally to all shareholders. The bidder is always permitted to be changed if he is acting in concert with other parties. Modification of the terms of the offer must be included in a supplement to the prospectus and must be published within 3 days.

9. Is the bidder entitled to withdraw the offer?

— Only voluntary offers may be withdrawn.

— The withdrawal right and the circumstances in which withdrawal applies must be specified in the offer documents.

— Occurrence of a withdrawal event cannot be within the bidder's discretion.

10. May a mandatory offer be submitted in the form of a share/paper offer?

— This is permissible for voluntary offers;

— a consideration **in cash** financially equivalent to the offered exchange of securities must be offered, **at least as an alternative,** in the following cases:

- where the bidder or persons acting in concert have acquired securities in cash amounting to at least 5% of the voting rights within the last 12 months.
- In the case of a mandatory offer, if control over the target has been obtained.
- Where the consideration consists of a share/paper offer issued on an EU country's securities market or shares to be issued by the bidder, provided that the bidder undertakes to list the new shares within three months as from publication of the result of the offer.
- Where the control over the target is acquired through a voluntary offer and there is a subsequent offer to increase the control, provided that the previous offer was also paid in shares/paper.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— A decision by the bidder to launch a voluntary offer;
— events triggering a mandatory offer obligation;
— untoward price movements in target securities or rumours and speculations concerning an impending offer caused by the bidder's plans or intentions to launch an offer.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The target's management is under a general obligation to keep sensitive information confidential.
— The target's management may permit due diligence by the bidder if it deems this to be in the target's best interest.
— Prior to announcement of bidder's intention to launch a bid, the target and its employees involved in the due diligence have a continuing duty of confidentiality.

13. What deal protection measures may a bidder implement?

— There is no established case law relating to deal protection measures.
— Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations (but may trigger a requirement to disclose the bidder's intention of launching a bid).
— Irrevocable undertakings of shareholders generally are permissible, but may establish "acting in concert".
— Protective undertakings of the target's board of directors in favour of a particular bidder are only permissible if they are in the target's best interest (voluntary board neutrality rule).

14. What provisions exist relating to board neutrality?

— The Takeover Directive's board neutrality rule has been implemented as a compulsory regime for the board of directors. The shareholders' general meeting is entitled to pass a resolution releasing the board from this rule.
— The shareholders' general meeting has competence to decide concerning the application of the neutrality measures. The board of directors must prepare a report explaining the reasons for the measures and their nature.
— There is no obligatory reciprocity exception for bidders from EU Member States which have not implemented the board neutrality rule.

15. What conditions are permissible for mandatory offers?

— Mandatory offers may be subject only to regulatory approval conditions.
— Voluntary offers may contain the following conditions:

- approval of structural measures, amendment of the target's by-laws or passing of resolutions by the target's general meeting;
- minimum acceptance by a number of shareholders;
- approval of the bid by the target's general meeting;
- any other condition deemed by the CNMV to be in compliance with the law;
- regulatory approval.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

— The bidder may acquire target securities during the bid process. However, if the bid is subject to the fulfilment of conditions, the acquisition of such

securities will remove the conditions, which will thereafter cease to apply.
- The purchase of securities as well as the consideration paid must be notified to the CNMV.
- Acquisition of shares by the bidder or persons acting in concert for a higher cash consideration will require a simultaneous increase of the offer price.

17. When and in what form does the financing of the offer have to be secured?

- The bidder must provide evidence to the CNMV that guarantees securing the fulfilment of the obligations resulting from the bid have been deposited.
- Bank guarantees and performance bonds are accepted as securities for the cash consideration.
- Where issued securities are offered as consideration, evidence of their availability must be presented. If securities have to be issued by the bidder, its directors must act in a way consistent with the bid and must undertake every necessary act to allow the issuance of the securities offered. If the CNMV considers that directors are not acting consistently with the bid, it could demand a guarantee covering damages as a consequence of the securities not being finally issued.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder is required to submit an evaluation report issued by an expert a) for the calculation of the "equitable price" of a de-listing bid, if applicable; b) when a consideration in cash for an offer is improved by adding exchange of securities; and c) also when b) occurs within a competitive offer.
- The expert must be selected from among a) auditors or auditing firms with certain minimum insurance cover, or b) credit institutions (including investment banks) subject to a minimum equity requirement.
- In practice, an expert is usually appointed from among the "Big Four" accountancy firms, even where a major investment bank acts as financial advisers.
- The bidder's expert is primarily responsible for the adequacy of the offer price or consideration.
- The target will also commonly request an expert to be involved in the procedure concerning the completeness of the board of directors' report.

19. What are the regulatory fees for takeover proceedings?

CNMV fees will depend on the number of shares for which the offer is made, and the calculation formula will depend on whether or not the consideration is paid in cash. The fees will amount to a minimum of EUR 3,485.56 and a maximum of EUR 69,727.25.

20. What are the legal consequences of a failure to make a mandatory offer?

- Statutory suspension of the voting rights of the bidder (and parties acting in concert) until a mandatory offer is made;
- an administrative fine, to be determined for each case (infringements are considered very serious under the applicable Securities Market Law);
- possible damages claims from current and former target shareholders.

21. What shareholding is generally required for a squeeze-out?

The bidder must hold at least 90% of the share capital with voting rights.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

A facilitated squeeze-out after successful bid is possible if:
- the bidder has become the holder of at least 90% of the share capital with voting rights; and
- the bid has been accepted by the holders of securities representing at least 90% of the voting rights to which it was addressed;
- the squeeze-out resolution is adopted within three months after the end of the offer period.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The bidder may request the other shareholders to sell all their securities (squeeze-out), and these shareholders are entitled to request the bidder to purchase their target securities (sell-out) at an **"equitable price".** An equitable price for a squeeze-out is understood as the price of the previous offer.
- The guarantee (for the squeeze-out) will remain in force until completion of the squeeze-out.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

Target shareholders are entitled to a sell-out in the same circumstances as the bidder is entitled to a squeeze-out.

25. What other requirements need to be observed in the context of a sell-out?

Expenses for settlement of the sell-out must be paid by the bidder.

Switzerland

Stephan Werlen, stephan.werlen@cms-veh.com

1. What transactions/actions generally trigger a mandatory offer?

Acquisition, directly or indirectly, or by acting in concert, of more than 33.33% of the voting rights of the target (whether or not such rights are exercisable).

2. What are the principal exemptions from the mandatory offer requirement?

— The target’s articles of association may either provide for an increase of the threshold to 49% (“opting up”) or state that no acquirer will be required to submit a mandatory offer (“opting out”).

— If the equity securities (voting rights) were acquired by way of donation, inheritance, estate distribution, marital property law or execution.

— General exemptions apply if:
  - the threshold is exceeded within the scope of a financial restructuring, i.e. where the share capital is decreased and immediately increased;
  - banks or securities traders, alone or as part of a syndicate, acquire equity securities on a firm basis within the scope of an issue and undertake to resell the number of equity securities exceeding the threshold within three months after the threshold has been exceeded, and the resale has actually taken place within this period.

— Finally, the supervisory authority may grant, subject to conditions, exemptions in justified cases, e.g.:
  - intra-group transfer;
  - decrease in the aggregate number of voting rights of the company;
  - exceeding of the threshold on a temporary basis only;
  - acquisition of equity securities for no consideration or by way of exercising preferential subscription rights within the scope of a capital increase;
  - acquisition in the context of a financial restructuring;
  - if another person holds a greater number of voting rights preventing the acquirer from controlling the target.

3. What actions amount to “acting in concert” and what are their consequences?

— Any coordination by way of agreement or other organised measures with a view to the acquisition or sale of equity securities or the exercise of voting rights is considered as acting in concert.

— Persons acting in concert are required to disclose the aggregated shareholding, the identity of the persons involved, the type of agreement and the representative of the group.

— In the context of an offer, persons acting in concert are required to respect certain provisions (relating to equal treatment, disclosure notices, etc.); however, unless the offer documents state otherwise, parties considered to be acting in concert with a bidder are not liable for the offer price.

4. What actions amount to “creeping-in”, and what are their consequences?

There are no specific regulations dealing with “creeping-in”.

5. How long does it take to complete a mandatory offer?

— The bidder must publish his offer within two months of exceeding the relevant threshold at the latest.

- Normally, the offer period is at least 20 and no more than 40 stock exchange days (not including the grace period and the supplemental period). However, a number of exceptions exist, so the offer period may be longer. In exceptional cases, i.e. where a) the bidder holds more than 50% of the voting rights prior to the offer and b) the report of the target's board is included in the offer documents, the offer period may be shortened to ten stock exchange days.
- Principal stages of the offer process:
  1) Preliminary announcement (voluntary). Within six weeks (extendable if valid reasons exist) of the preliminary announcement, if any, the bidder must publish his offer.
  2) Review of the offer documents by a securities trader or an audit company recognised by the Swiss Financial Market Supervisory Authority (FINMA).
  3) Filing of the offer documents with the Swiss Takeover Board (voluntary); if the offer documents are not filed prior to publication, the Swiss Takeover Board will review them following the publication and will render during the grace period a decree concerning the offer.
  4) Publication of the offer in two newspapers with national coverage and two information providers (e.g. Bloomberg, Reuters, etc.).
  5) Grace period of ten stock exchange days.
  6) Offer period between 20 (ten in certain cases) and 40 stock exchange days.
  7) Publication of the provisional interim result on the first stock exchange day after the end of the offer period.
  8) Publication of the final interim result within four stock exchange days after the end of the offer period.
  9) Supplemental period of ten stock exchange days.
  10) Publication of the final result.

6. What are the factors impacting the minimum price of an offer?

- The minimum price of an offer a) must correspond at least to the average volume-weighted market price for the equity securities of the target during the last 60 stock exchange days prior to the pre-announcement or the publication of the offer and b) may not be more than 25% below the maximum consideration paid by the bidder (or parties acting in concert) for equity securities of the target in past transactions during a period of 12 months prior to the pre-announcement or the publication of the offer (this latter regulation, which allows the payment of so-called control premiums, is currently being reviewed and the Swiss Takeover Board has proposed to either abolish it completely, or at least to modify the regulation and to narrow its scope of application to allow a control premium only if the prior acquisition comprises at least 33.33% of the voting rights of the target).
- Transactions of the bidder (or parties acting in concert) within six months after the end of the supplemental period for consideration in excess of the offer price will (retroactively) increase the offer price.

7. May the bidder modify the offer price?

- Basically, the bidder may only increase the offer price (the increased offer price also applies retroactively to acceptances).
- Under certain circumstances, and if the bidder has reserved the right to do so in the offer documents, the offer price may be decreased. Typically, such reservation can be found where a bidder has not been able yet to conduct a due diligence on the target. In such situation, the bidder may identify certain (substantial) deficiencies the detection of which shall entitle him to decrease the offer price by a previously determined amount.

8. Is the bidder entitled to modify other terms of the offer?

Terms of an offer may be modified only if the modification results in an improvement for the target shareholders.

9. Is the bidder entitled to withdraw the offer?

- Only voluntary offers may be withdrawn;
- the right of withdrawal must be reserved in the offer documents.

10. May a mandatory offer be submitted in the form of a share/paper offer?

Yes. However, non-cash (mandatory) offers must be combined with an alternative cash (only) offer.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- Provided the bidder is listed on SIX Swiss Exchange (or another exchange), the bidder may be required by applicable regulations on ad hoc publicity, and in accordance with such regulations, to make a public announcement upon its board of directors having taken the decision to submit an offer (or, in the event public announcement has been postponed in accordance with ad hoc publicity regulations, if such information leaks to the public and, hence, confidentiality is no longer assured).
- Within two months after exceeding the threshold of 33.33% of the voting rights (or, in the event of an opting up, of 49% of the voting rights), the bidder must submit its offer and make the corresponding public announcement.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

- The target's board may permit due diligence by the bidder if it deems this to be in the target's best interest.
- Particular regulations may apply in case of competing offers: where one bidder has been granted by the target the right to conduct a due diligence, the competing bidders (provided they have submitted an offer in accordance with applicable regulations) are entitled to request the target to provide them with the same documents and information to conduct a due diligence of their own.

13. What deal protection measures may a bidder implement?

- The bidder may define certain assets/business areas of the target in his offer which he considers as being of key importance for his offer and which the target company may thereafter no longer dispose of without a shareholders' resolution to the contrary.
- Irrevocable undertakings of shareholders generally are permissible, but may establish "acting in concert" and may not be enforceable in the event of a competing offer.
- Break-up fees are permissible if they are not excessively high (disputed by legal scholars).

14. What provisions exist relating to board neutrality?

- The target's board must treat different bidders equally.
- Without a shareholders' resolution, the board may not implement any new defensive measures (poison pills) against the bidder.

15. What conditions are permissible for mandatory offers?

Normally, mandatory offers may be subject to conditions only if a valid reason exists, e.g.:
- the offer or the acquisition of the equity securities requires the authorisation of a public authority;
- the equity securities to be acquired will not confer any voting rights; or
- the bidder requires certain assets of the target not to be altered.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may not acquire equity securities of the target on terms more favourable than the offer terms, unless the offer is improved simultaneously.

17. When and in what form does the financing of the offer have to be secured?

- The review body must confirm in the offer documents that the bidder has taken the necessary measures to ensure that the required funds/securities are available on the closing date.
- Accordingly, the bidder must take the steps necessary prior to publication of the offer documents – in the event of a cash offer by way of a) free cash, b) open credit lines or c) the firm financing commitment of a financial institution, and in the event of a share/paper offer by way of having available a sufficient number of securities.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

- The bidder must involve a review body that reviews the offer documents and supervises the offer process.
- The review body must either be a securities trader or an audit company approved by FINMA.
- Often, investment banks and legal counsel are involved as advisers by both the bidder and the

target, with additional investment banks involved for the preparation of fairness opinions.

19. What are the regulatory fees for takeover proceedings?

- The Swiss Takeover Board levies a fee that is calculated in relation to the aggregate consideration of the offer as follows:
  - 0.5‰ for consideration up to CHF 250,000,000 (i.e. currently approx. EUR 192,500,000);
  - 0.2‰ for consideration between CHF 250,000,000 and CHF 625,000,000 (i.e. between currently approx. EUR 192,500,000 and EUR 481,380,000);
  - 0.1‰ for consideration above CHF 625,000,000 (i.e. currently approx. EUR 481,380,000).
- The minimum fee amounts to CHF 25,000 (i.e. currently approx. EUR 19,250) and the maximum fee is CHF 250,000 (i.e. currently approx. EUR 192,500). In particular cases, the fee may either be reduced or increased by up to 50%.

20. What are the legal consequences of a failure to make a mandatory offer?

At the request of the Swiss Takeover Board, the target or one of its shareholders, a court may suspend the voting rights of a person not complying with the requirement to make a mandatory offer.

21. What shareholding is generally required for a squeeze-out?

- In order to conduct a squeeze-out merger, 90% or more of the voting rights are required.
- In order to conduct a squeeze-out following a public offer, 98% or more of the voting rights are required.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Following a successful public offer, a squeeze-out is possible a) within the first three months and b) if the acquirer holds 98% or more of the voting rights.

23. What other legal requirements need to be observed in the context of a squeeze-out?

- The bidder must file a claim against the target for cancellation of the outstanding equity securities not in the hands of the bidder.
- The filing of the claim will be published, and holders of the outstanding equity securities may accede to the court proceedings within a period of three months from the day of publication.
- Shareholders receive the price offered in the context of the public offer (without interest).

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

After publication of the results of a (successful) offer, shareholders who have not (yet) accepted the offer are granted a supplemental period of ten stock exchange days during which they may tender their equity securities on the terms and conditions of the public offer.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

Ukraine

Johannes Trenkwalder, johannes.trenkwalder@cms-rrh.com
Adam Mycyk, adam.mycyk@cms-cmck.com
Maria Orlyk, maria.orlyk@cms-rrh.com
Ruslan Ostapenko, ruslan.ostapenko@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

A person (or persons acting in concert) having acquired 50% or more of the ordinary shares of a Joint Stock Company **("JSC")** is required to make a mandatory offer within 20 days after such acquisition to all existing shareholders to purchase their ordinary shares.

2. What are the principal exemptions from the mandatory offer requirement?

The acquisition of 50% or more of ordinary shares in a JSC in the course of privatisation transactions does not trigger the mandatory offer requirement.

3. What actions amount to "acting in concert" and what are their consequences?

- "Persons acting in concert" are defined as individuals and legal entities acting on the basis of an agreement/arrangement between them and coordinating their actions to achieve a common purpose.
- For the purposes of the mandatory offer, the shareholdings of parties acting in concert are aggregated.

4. What actions amount to "creeping-in", and what are their consequences?

Creeping-in is not regulated under Ukrainian law.

5. How long does it take to complete a mandatory offer?

- Within 20 days after exceeding the 50% threshold, the bidder must offer to acquire the remaining ordinary shares in the target from the other shareholders. The public irrevocable offer for all shareholders holding ordinary shares must be delivered to the target's supervisory board or executive body, the state securities regulator, and the stock exchange on which the target is listed.
- Within 10 days after receipt of the offer documents from the bidder, the target's supervisory board or executive body must distribute the offer documents to each shareholder (as entered in the target's register of shareholders).
- The period for acceptance of the offer by the shareholders must be between 30 and 60 days after receipt of the offer.
- After the period of 30 days has elapsed following the period mentioned in the offer, the bidder (including persons acting in concert) is required to pay the offer price to the shareholders who have accepted the offer.

6. What are the factors impacting the minimum price of an offer?

- The price for shares must not be less than the fair market value.
- The market value of the shares which are not traded on a stock exchange is defined by the certified appraisers in accordance with the applicable laws on appraisal activities.
- The market value of the shares which are traded on a stock exchange is defined in accordance with the laws on securities and stock exchange.
- At the same time the Supervisory Board is vested with the responsibility to affirm the market value of the shares.

7. May the bidder modify the offer price?

A decrease of the offer price below the minimum price is not permissible. There is no prohibition against increasing the offer price during the offer period.

8. Is the bidder entitled to modify other terms of the offer?

Modification of the terms of an offer is not addressed by Ukrainian law. At the same time, there is no prohibition against modifying the offer – provided, however, that the price does not decrease below the fair market value.

9. Is the bidder entitled to withdraw the offer?

The mandatory offer is irrevocable.

10. May a mandatory offer be submitted in the form of a share/paper offer?

No legal provisions on this matter exist in Ukrainian law. No information is available whether share/paper offers have been used in practice.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

- No public announcement of the intention to launch an offer is required under Ukrainian law.
- A public announcement of the intention to acquire a "significant shareholding" is required. A person (along with persons acting in concert) intending to acquire shares which together with the shares already held amount to 10% or more of the ordinary shares of the JSC must announce (by giving notice to the state securities regulator and the stock exchange where the target is listed as well as by means of announcement in the official publication) its intention to acquire such shareholding no later than 30 days preceding the intended acquisition.

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

The bidder has 20 days from the moment of acquisition of 50% or more shares in the JSC to launch the mandatory offer. Under these circumstances, due diligence can be carried out. At the same time, since Ukrainian law does not regulate this concept, a due diligence may be carried out any time under the parties' agreement.

13. What deal protection measures may a bidder implement?

- There are no specifically defined protection measures a bidder can implement under Ukrainian law.
- Pre-launch stake building by the bidder will generally be permissible under takeover law and insider regulations; however, it may require clearance from the antimonopoly authority.
- Irrevocable undertakings of shareholders are generally not applicable under Ukrainian law.
- The bidder and the shareholders may agree upon any break fees payable by the target, but these are highly unlikely to be enforceable.
- Protective undertakings in favour of a particular bidder are only permissible if they are in the target's best interest.

14. What provisions exist relating to board neutrality?

Board members and officers of the target are obliged to act in the interests of the target and comply with applicable laws and internal regulations. Board members and officers are jointly and severally liable to the target for losses the target suffers as a result of actions or failure to act. There is no explicit duty for the board of the target to remain neutral to takeover bids.

15. What conditions are permissible for mandatory offers?

Mandatory offers may be subject to statutory conditions (e.g. merger clearance (if required); notification to the state securities regulator) only.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

- No parallel purchase of shares outside the offer is possible.
- Parallel acquisitions of shares could be used in voluntary control-seeking offers that constitute pre-launch stake building.

17. When and in what form does the financing of the offer have to be secured?

There are no particular requirements in this respect under Ukrainian law.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

There is no mandatory requirement to involve advisers or experts in the offer process.

19. What are the regulatory fees for takeover proceedings?

The standard application filing fee for obtaining antimonopoly authority clearance (if required) amounts to UAH 5,100 (approximately EUR 500). The state registration fee for registering the target's constituent documents, modified as a result of change of shareholders in connection with the takeover, amounts to UAH 170 (approximately EUR 17).

20. What are the legal consequences of a failure to make a mandatory offer?

- The law does not specify any penalties for a failure to make a mandatory offer.
- Damages claims from current and former target shareholders are possible.

21. What shareholding is generally required for a squeeze-out?

- As of today, Ukrainian law does not provide a squeeze-out right for the majority shareholder. A shareholder that has acquired more than 50% of the shares is obliged to offer to acquire shares from the other shareholders, but has no right to squeeze-out any other shareholders.
- The Ukrainian Parliament has recently passed a draft law to amend the existing law "On Joint Stock Companies" which, if enacted, would enable majority shareholders holding 95% of the shares to squeeze-out the minority shareholders.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

Currently, simplified squeeze-outs are not possible in Ukraine.

23. What other legal requirements need to be observed in the context of a squeeze-out?

Current Ukrainian law does not govern squeeze-outs.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

No sell-out right exists after the end of the acceptance period for a mandatory offer.

25. What other requirements need to be observed in the context of a sell-out?

No other particular requirements.

United Kingdom

Gary Green, gary.green@cms-cmck.com

1. What transactions/actions generally trigger a mandatory offer?

— A mandatory offer can be triggered in two circumstances:
  - any person acquires an interest in shares which (taken together with the shares in which persons acting in concert with him are interested) carries 30% or more of the voting rights of a company to which the Takeover Code **("Code")** applies; or
  - any person, together with persons acting in concert, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and that person, or any person acting in concert, acquires an interest in any other shares (in a company to which the Code applies) which increases the percentage of shares carrying voting rights in which he is interested.

— Mandatory offers – and takeover offers and certain other matters – are regulated by the Panel on Takeovers and Mergers **("Panel")** which issues and administers the Code. The Panel is the supervisory authority designated to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC).

Scope of the Code

— With certain exceptions, the Code generally applies to all offers for companies and Societates Europaeae which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the UK or on any stock exchange in the Channel Islands or the Isle of Man.

— With certain exceptions, the Code also applies to all offers (not covered by the previous paragraph) for public and private companies and Societates Europaeae which have their registered offices in the UK, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man, but in relation to private companies only when, during the ten years prior to the relevant date:
  - any of their securities have been admitted to the UK's Official List at any time; or
  - dealings and/or prices at which persons were willing to deal in any of their securities have been published regularly for a continuous period of at least six months by a newspaper, electronic price quotation system or otherwise; or
  - any of their securities have been subject to a marketing arrangement of a particular type at any time; or
  - they were required to file a prospectus for the issue of securities with the Registrar of Companies or any other relevant authority in the UK, the Channel Islands or the Isle of Man or to have a prospectus approved by the UK listing authority at any time.

— Mandatory offers must be made to the holders of all classes of equity share capital (voting or non-voting) and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable and the Panel should be consulted in advance in such cases.

2. What are the principal exemptions from the mandatory offer requirement?

— Exemption is at the discretion of the Panel, which must be consulted before triggering the mandatory offer obligation.

- The Panel may waive this obligation when it is triggered by an issue of new securities as consideration for an acquisition or a cash subscription approved by a simple majority of shareholders in the target who are independent (i.e. not the person triggering the offer or any person acting in concert with him).
- Where shares or other securities are charged to security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a mandatory offer, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender so that the percentage of shares carrying voting rights in which the lender and persons acting in concert with it are interested is reduced below 30%.
- If the target is in a precarious financial position, so that it can only be saved by an urgent rescue operation involving the issue of new shares without approval by a vote of the independent shareholders or the acquisition of existing shares by the rescuer, the Panel may waive the requirement for a mandatory offer.
- If, due to an inadvertent mistake, a person incurs an obligation to make a mandatory offer, the Panel will not normally require a mandatory offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with him so as to reduce his interest and that of persons acting in concert with him to below 30%.
- The Panel may waive the requirement for a mandatory offer where holders of shares carrying 50% or more of the voting rights state in writing that they would not accept such an offer or where shares carrying 50% or more of the votes are already held by one other person.

3. What actions amount to "acting in concert" and what are their consequences?

- Persons who, pursuant to an agreement or understanding (formal or informal), cooperate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company are acting in concert for these purposes.
- A person and each of its affiliated persons (broadly, entities that the person controls) will be all deemed to be acting in concert with one another.
- Certain persons are presumed to be persons acting in concert with other persons in the same category unless the contrary is established. These include: members of a group of companies and associated companies (20% or more ownership or control); and directors and their companies.
- "Control" means an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, irrespective of whether such interest provides *de facto* control.
- Consequence of acting in concert: shares and interests in shares of concert parties are aggregated for deciding whether relevant thresholds are reached (such as 30% and between 30 and 50%) and all parties acting in concert are subject to the mandatory offer obligation.

4. What actions amount to "creeping-in", and what are their consequences?

A mandatory offer may be triggered by the acquisition of any share or interest in voting shares, however small, if more than 30% but less than 50% are held before the acquisition.

5. How long does it take to complete a mandatory offer?

- When triggered, a mandatory offer would have to be followed by an offer document within 28 days. Normally the period would be much shorter – perhaps one or two days.
- The offer would have to remain open for acceptances for at least 21 days from the date the offer document is published. If the offer does not become unconditional as to acceptances, the bidder can (but is not obliged to) extend the offer for a further period.

6. What are the factors impacting the minimum price of an offer?

- The offer must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the bidder (or any person acting in concert) for any interest in shares of that class during the 12 months prior to the announcement of the offer.
- If, after an announcement of a mandatory offer made for a class of share capital and before the offer closes for acceptance, the bidder or any person acting in concert acquires any interest in shares of that class at above the offer price, it must increase its offer for that class to not less than the highest price paid for the interest in shares so acquired.

7. May the bidder modify the offer price?

Yes.

8. Is the bidder entitled to modify other terms of the offer?

Only if the Panel agrees.

9. Is the bidder entitled to withdraw the offer?

No.

10. May a mandatory offer be submitted in the form of a share/paper offer?

A non-cash offer is only permissible as an alternative to a cash offer at not less than the minimum offer price.

11. What events/circumstances trigger an obligation to make a public announcement of the bidder's intention to launch an offer?

— An obligation to announce immediately arises if a mandatory offer obligation is triggered. The Panel should be consulted first and immediately.

— An obligation to announce a voluntary offer arises when a firm intention to make an offer is notified to the target's board from a serious source, irrespective of the attitude of the target's board to the offer.

— An obligation to announce arises when, following an approach to the target, the target is the subject of rumour and speculation or there is an untoward movement in its share price. The Panel must be consulted immediately. Unless there is a firm intention to make an offer requiring announcement, such an announcement would normally be a brief holding announcement. Normally the target will be responsible for making such an announcement.

— An obligation to announce arises when, before an approach has been made, the target is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential bidder's actions (whether through inadequate confidentiality precautions or otherwise) which have led to the situation. The bidder will be responsible for making such an announcement.

— An obligation to announce arises when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the parties concerned and their immediate advisers).

12. Under what circumstances may the bidder carry out a due diligence relating to the target company?

— The bidder will carry out due diligence from publicly available information. Due diligence from information provided by the target is subject to the target's board agreeing to provide information.

— Such information will be provided only if the target's board considers it to be in the interests of the target to do so and a confidentiality agreement is entered into.

— If information is provided by the target to one potential bidder, the same information must be given to any other potential bidder on request even if that other bidder is less welcome. This is often one reason why targets limit the scope of information provided even to a potential bidder that is welcomed by the target's board.

13. What deal protection measures may a bidder implement?

— Subject to not being prevented from so doing by market abuse and insider dealing laws or an agreement with the target preventing it from so doing, a potential bidder may acquire shares or derivatives referenced to shares in the target. With certain exceptions, such shares or interests will be disclosable at certain thresholds (broadly at 1% and above during an "offer period" under the Code or at 3% and each subsequent 1% under disclosure and transparency rules).

— A bidder may seek irrevocable undertakings from shareholders to accept the offer subject to confidentiality and approval from the Panel which will not be given if more than a very limited number are approached. Obtaining irrevocable undertakings to accept an offer does not, of itself, amount to "acting in concert".

— Break fees payable by the target are unlikely in the context of a mandatory offer.

14. What provisions exist relating to board neutrality?

The target's board must act independently and in the target's interest in considering the merits of a prospective offer. It must seek competent independent financial advice. The substance of such advice must be made available to known target shareholders.

15. What conditions are permissible for mandatory offers?

- A mandatory offer must be conditional only upon receiving acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the bidder and persons acting in concert holding shares carrying more than 50% of the voting rights.
- A person must not acquire any shares or interests in shares if doing so would trigger the requirement for a mandatory offer and the making or implementation of that offer would or might be dependent on the passing of a resolution of the bidder's shareholders or on any other condition, consent or arrangement.
- If appropriate, a mandatory offer can be subject to a term that the offer will lapse if it is referred to the UK Competition Commission or if the European Commission initiates Phase II merger control proceedings.

16. May the bidder acquire shares outside the offer (in parallel transactions)?

The bidder may acquire shares outside the offer – for example market purchases. If the acquisition is on terms more favourable than the offer, the terms of the offer must be improved.

17. When and in what form does the financing of the offer have to be secured?

The bidder has to secure its financing before triggering a mandatory offer and will be required to procure that its independent financial adviser gives cash confirmation to the Panel.

18. Do external advisers/experts have to be involved in the offer process, and what is their role?

The target's board must obtain competent independent advice (financial advice) on any offer and substance of that advice must be made known to its shareholders. In practice, the bidder will also appoint a financial adviser. Both bidder and target will appoint their own solicitors.

19. What are the regulatory fees for takeover proceedings?

These are insignificant in the context of an offer. Document charges are payable to the Panel. They range from GBP 2,000 (approximately EUR 2,300) if the value of the offer is GBP 1–5 million (maximum: 0.20% of the value of the offer) to GBP 175,000 (approximately EUR 200,300) if the value of the offer is over GBP 1,000 million (maximum: 0.02% of the value of the offer).

20. What are the legal consequences of a failure to make a mandatory offer?

- The Panel may impose sanctions for breach of the Code including compensation.
- The Panel may apply to court for an order to secure compliance with the Code, and a court may make such order as it thinks fit to secure compliance.

21. What shareholding is generally required for a squeeze-out?

The bidder's right to buy the minority shareholdings (squeeze-out right) is triggered on satisfaction of a dual test: a bidder needs to have acquired or unconditionally contracted to acquire both 90% of the shares to which the offer relates and 90% of the voting rights in the company to which the offer relates. This right is exercisable on a class-by-class basis if there is more than one class of share capital.

22. Under what circumstances is a simplified squeeze-out possible (following a successful public offer)?

The squeeze-out procedure is available only when, as a result of a takeover offer, a bidder acquires the relevant proportion of the target's shares. It is not available at other times. The procedure, and the conditions that must be met to initiate it, are the same for all takeover offers, whether the target's shares are publicly traded or not.

23. What other legal requirements need to be observed in the context of a squeeze-out?

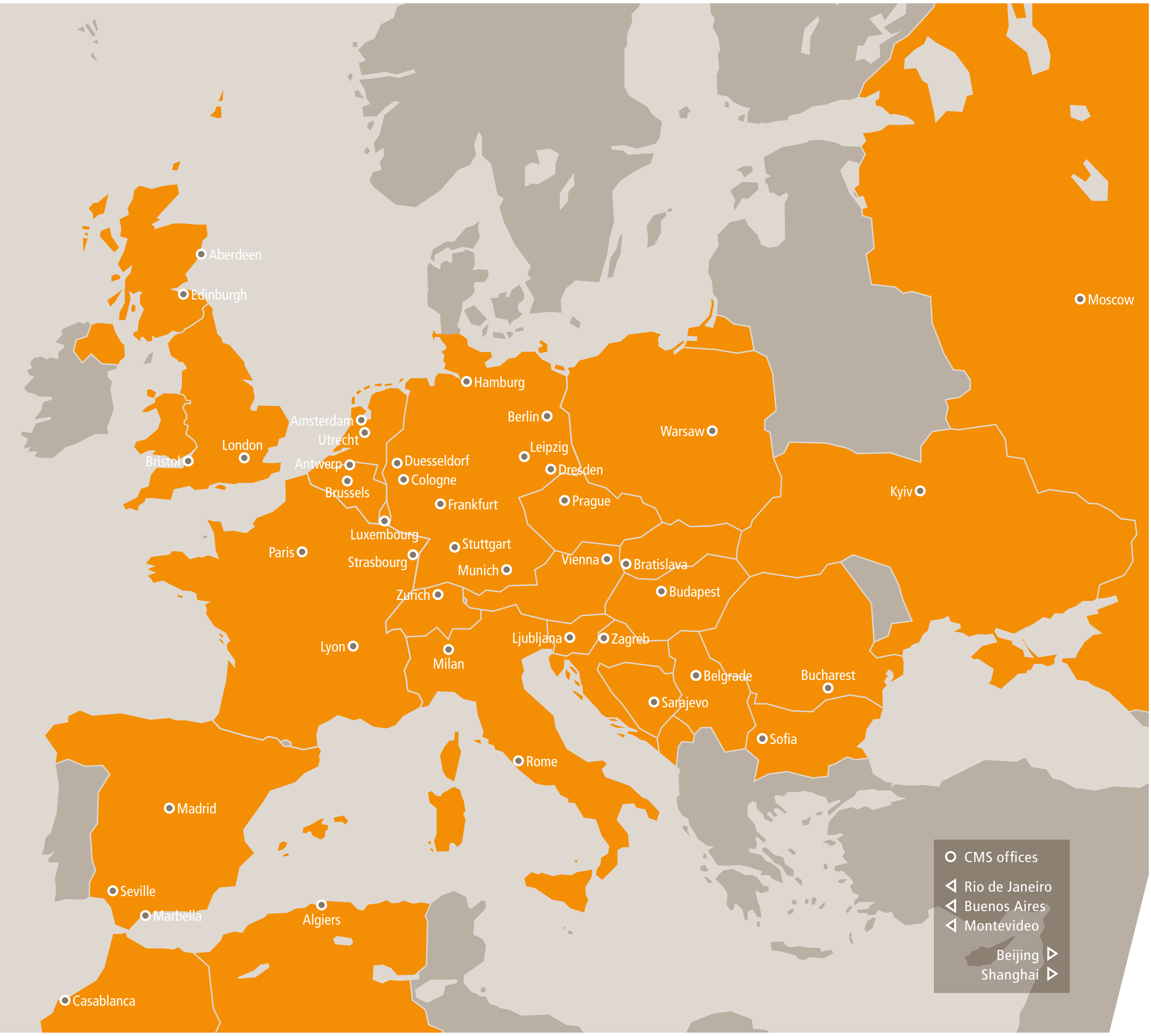
The bidder must serve a statutory notice on each target shareholder whose shares are being compulsorily acquired, informing them about the squeeze-out, how they can obtain the consideration due to them (which will be held on trust for them by the target), any opportunity to elect for a particular form of consideration, and their right to apply to court to object to the squeeze-out.

24. Under what circumstances are the shareholders of the target entitled to a sell-out?

The minority shareholders' right to be bought out (sell-out right) is also triggered on satisfaction of a dual test: any minority holder has the right to require the bidder to buy his shares at the offer price if the bidder has obtained 90% of both the issued shares and the voting rights in the company. This right is exercisable on a class-by-class basis if there is more than one class of share capital.

25. What other requirements need to be observed in the context of a sell-out?

A shareholder wishing to be bought out must serve written notice on the bidder within three months of the end of the offer period or, if later, within one month of the bidder notifying minority shareholders of their right to be bought out. Where the offer gave a choice of consideration, a shareholder wishing to be bought out can choose the form of consideration he prefers (although if he elects for a form of consideration that has ceased to be available, he will be entitled only to an equivalent amount of cash).



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This guide is intended only to provide a general overview of the matters covered. It is based upon the law in each of the countries as at 1 January 2011. However, the information contained in this guide is not comprehensive and does not purport to be professional advice.

For further information on the current legal framework and practice governing public takeovers and squeeze-outs in Europe, contact any of the people listed in the CMS Contacts section from page 98, or your usual contact at CMS.

CMS Contacts

AUSTRIA
Vienna
CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH
Ebendorferstraße 3
1010 Vienna, Austria
T +43 1 40443 0
F +43 1 40443 90000

Peter Huber
E peter.huber@cms-rrh.com

BELGIUM
Brussels
CMS DeBacker
Chaussée de La Hulpe 178
1170 Brussels, Belgium
T +32 2 74369 00
F +32 2 74369 01

Carl Leermakers
E carl.leermakers@cms-db.com

BOSNIA AND HERZEGOVINA
Sarajevo
CMS Reich-Rohrwig Hainz d.o.o.
Ul. Fra Anđela Zvizdovića 1
71000 Sarajevo, Bosnia and Herzegovina
T +387 33 2964 08
F +387 33 2964 10

Nedžida Salihović-Whalen
E nedzida.salihovic-whalen@cms-rrh.com

BULGARIA
Sofia
Pavlov and Partners Law Firm
in cooperation with
CMS Reich-Rohrwig Hainz
Landmark Centre
14 Tzar Osvoboditel Blvd.
1000 Sofia, Bulgaria
T +359 2 92199 21
F +359 2 92199 29

Gentscho Pavlov
E gentscho.pavlov@cms-rrh.com

Sofia
Petkova & Sirleshtov Law Office
in cooperation with
CMS Cameron McKenna
Landmark Centre
14 Tzar Osvoboditel Blvd.
1000 Sofia, Bulgaria
T +359 2 92199 10
F +359 2 92199 19

Atanas Bangachev
E atanas.bangachev@cms-cmck.com

CROATIA
Zagreb
CMS Zagreb
Ilica 1
10000 Zagreb, Croatia
T +385 1 4825 600
F +385 1 4825 601

Gregor Famira
E gregor.famira@cms-rrh.com

CZECH REPUBLIC
Prague
CMS Cameron McKenna v.o.s.
Palladium
Na Poříčí 1079/3a
110 00 Prague 1, Czech Republic
T +420 2 96798 111
F +420 2 96798 000

Helen Rodwell
E helen.rodwell@cms-cmck.com

FRANCE
Paris
CMS Bureau Francis Lefebvre
1–3, villa Emile Bergerat
92522 Neuilly-sur-Seine Cedex, France
T +33 1 4738 5500
F +33 1 4738 5555

Jacques Isnard
E jacques.isnard@cms-bfl.com

GERMANY
Hamburg
CMS Hasche Sigle
Stadthausbrücke 1–3
20355 Hamburg, Germany
T +49 40 37630 0
F +49 40 37630 40600

Henrik Drinkuth
E henrik.drinkuth@cms-hs.com

Stuttgart
CMS Hasche Sigle
Schöttlestraße 8
70597 Stuttgart, Germany
T +49 711 9764 0
F +49 711 9764 900

Karsten Heider
E karsten.heider@cms-hs.com

HUNGARY
Budapest
Ormai és Társai
CMS Cameron McKenna LLP
YBL Palace
Károlyi Mihály utca 12
1053 Budapest, Hungary
T +36 1 48348 00
F +36 1 48348 01

Anikó Kircsi
E aniko.kircsi@cms-cmck.com

ITALY
Rome
CMS Adonnino Ascoli & Cavasola Scamoni
Via Agostino Depretis, 86
00184 Rome, Italy
T +39 06 4781 51
F +39 06 4837 55

Pietro Cavasola
E pietro.cavasola@cms-aacs.com

THE NETHERLANDS
Amsterdam
CMS Derks Star Busmann
Mondriaantoren – Amstelplein 8A
1096 BC Amsterdam, The Netherlands
T +31 20 3016 301
F +31 20 3016 333

Reinout Slot
E reinout.slot@cms-dsb.com

POLAND
Warsaw
CMS Cameron McKenna
Dariusz Greszta Spółka Komandytowa
Warsaw Financial Centre
Ul. Emilii Plater 53
00-113 Warsaw, Poland
T +48 22 520 5555
F +48 22 520 5556

Dariusz Greszta
E dariusz.greszta@cms-cmck.com

ROMANIA
Bucharest
CMS Cameron McKenna SCA
S-Park
11–15, Tipografilor Street
B3–B4, 4th Floor
District 1
013714 Bucharest, Romania
T +40 21 4073 800
F +40 21 4073 900

Horea Popescu
E horea.popescu@cms-cmck.com

RUSSIA
Moscow
CMS, Russia
Gogolevsky Blvd., 11
119019 Moscow, Russia
T +7 495 786 4000
F +7 495 786 4001

John Hammond
E john.hammond@cmslegal.ru

SERBIA
Belgrade
CMS Reich-Rohrwig Hasche Sigle d.o.o.
Cincar Jankova 3
11000 Belgrade, Serbia
T +381 11 3208 900
F +381 11 3038 930

Radivoje Petrikić
E radivoje.petrikic@cms-rrh.com

SLOVAKIA
Bratislava
Ružička Csekes s.r.o.
in association with members of CMS
Vysoká 2B
811 06 Bratislava, Slovakia
T +421 2 3233 3444
F +421 2 3233 3443

Peter Šimo
E peter.simo@cms-rrh.com

SLOVENIA
Ljubljana
CMS Reich-Rohrwig Hainz
Tomšičeva 1
1000 Ljubljana, Slovenia
T +386 1 62052 10
F +386 1 62052 11

Aleš Lunder
E ales.lunder@cms-rrh.com

SPAIN
Madrid
CMS Albiñana & Suárez de Lezo, S.L.P.
Calle Génova, 27
28004 Madrid, Spain
T +34 91 4519 300
F +34 91 4426 045

Carlos Peña
E carlos.pena@cms-asl.com

SWITZERLAND
Zurich
CMS von Erlach Henrici Ltd
Dreikönigstrasse 7
8022 Zurich, Switzerland
T +41 44 2851 111
F +41 44 2851 122

Stephan Werlen
E stephan.werlen@cms-veh.com

UKRAINE
Kyiv
CMS Cameron McKenna LLC
6th Floor, 38 Volodymyrska Street
01034 Kyiv, Ukraine
T +380 44 39133 77
F +380 44 39133 88

Adam Mycyk
E adam.mycyk@cms-cmck.com

Kyiv
CMS Reich-Rohrwig Hainz TOV
19B Instytutska St.
01021 Kyiv, Ukraine
T +380 44 50335 46
F +380 44 50335 49

Johannes Trenkwalder
E johannes.trenkwalder@cms-rrh.com

UNITED KINGDOM
London
CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD, United Kingdom
T +44 20 7367 3000
F +44 20 7367 2000

Gary Green
E gary.green@cms-cmck.com