

Your World First

C/M/S/

Law . Tax

# CMS Guide to Mandatory Offers and Squeeze-outs

A CMS Corporate/M&A Publication

April 2017

## Table of Contents

<b>3</b>	Introduction
<b>5</b>	CMS tops M&A rankings again
<b>7</b>	Albania
<b>13</b>	Austria
<b>21</b>	Belgium
<b>27</b>	Bosnia and Herzegovina
<b>37</b>	Bulgaria
<b>45</b>	China
<b>53</b>	Croatia
<b>61</b>	Czech Republic
<b>69</b>	France
<b>79</b>	Germany
<b>87</b>	Hungary
<b>95</b>	Italy
<b>103</b>	Luxembourg
<b>111</b>	The Netherlands
<b>121</b>	Poland
<b>129</b>	Portugal
<b>137</b>	Romania
<b>145</b>	Russia
<b>151</b>	Serbia
<b>161</b>	Slovakia
<b>167</b>	Slovenia
<b>175</b>	Spain
<b>183</b>	Switzerland
<b>191</b>	Turkey
<b>199</b>	United Kingdom
<b>207</b>	Ukraine
<b>212</b>	Contacts

# Introduction

This Guide provides an overview of the current legal framework and practice governing public takeovers and squeeze-outs in a total of 26 jurisdictions (18 EU Member States, Albania, Bosnia-Herzegovina, Russia, Serbia, Switzerland, Turkey and Ukraine as well as China) and provides contact details of experienced legal advisors active in this field.

The number of jurisdiction covered demonstrates the growing geographic footprint of CMS across Europe and beyond as well as our capability to provide a seamless cross-border service.

At European level, the Takeover Directive (2004/25/EC) has created a framework setting certain minimum standards for public takeover bids in the EU. The Takeover 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.

While the Report from the EU Commission on the Application of the Takeover Directive (COM (2012) 347) which has been published in June 2012 has not led to any material amendments to the Directive, the takeover laws and in their application in many of the EU Member States and other jurisdictions covered in this Guide have clearly evolved since the previous edition of this Guide was published in 2011, an evolution which has effectively lessened the uniformity introduced by the

Takeover Directive. Apart from increasingly complex deal structures and the rising importance of activist shareholders in the takeover context, national legislators and regulators were faced with a wave of delistings and the issue whether a delisting should trigger a mandatory offer even in the absence of a change of control. This is clearly an area where new national legislation, following the German example, or even European regulation is to be expected.

The scope and relevance of 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. The Commission Report referred to above has highlighted that there are national exemptions from the offer obligation which in some cases are quite openly geared towards protecting national interests. It remains to be seen whether a higher degree of uniformity in this area will find sufficient support at the European level.



**Stefan Brunnschweiler**  
Head of CMS Corporate Group



**Peter Huber**  
Corporate Partner and Editor

A vibrant nighttime cityscape featuring several illuminated skyscrapers. The primary building on the left is a tall, modern structure with a grid-like facade of windows, many of which are lit up, creating a bright blue and white glow. To its right, another building is visible with red lights on its upper floors. The foreground shows a blurred street with light trails from moving vehicles, suggesting a long-exposure photograph. A large, semi-transparent red rectangle is overlaid on the left side of the image, serving as a background for the text.

# CMS tops M&A rankings again

2016 was another outstanding year for CMS' Corporate/M&A group, with excellent M&A rankings across Europe by deal count. With over 300 deals CMS advised on more transactions than any other law firm in Europe.

**#1** in Europe  
in CEE  
in France  
in Germany\*  
in UK

---

source: Bloomberg, \*Bloomberg, Mergermarket and Thomson Reuters



# Albania

## 1.

What transactions/actions generally trigger a mandatory offer?

- Direct or indirect shareholding exceeding 30% of the voting rights obtained through acquisitions.
- Parties with an aggregate shareholding of more than 30% of the voting rights acting in concert.

## 2.

What are the principal exemptions from the mandatory offer requirement?

- If, as a result of the share acquisition, the bidder or parties acting in concert do not take control of the company and the party who has control of the company is not substituted, the bidder has no obligation to make an offer, but they shall however notify the Authority of this within ten days.
- The Authority may, within ten days of receiving the information, require the bidder to make an offer if, due to the circumstances of the case, it deems it necessary to make the offer in order to protect the interests of the company or its shareholders.
- The exemptions from the mandatory offer applies to company restructuring operations as well.

## 3.

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

- “Acting in concert” is defined as any natural person or legal entity who cooperates with the bidder or the company on the basis of an agreement:
  - expressly or tacitly;
  - orally or in writing; and
  - aims either to acquire control of the joint stock company or to prevent the successful bid.
- Companies controlled by the bidders and companies controlled by joint stock companies (i.e. companies belonging to a group of companies) are considered as persons/parties acting in concert.
- In order to establish a controlling percentage, the voting rights of persons acting in concert with the bidder are considered as the bidder’s own voting rights.
- 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?

- Albanian 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 must be completed within three to ten weeks following the submission of the mandatory offer documents to the Financial Supervisory Authority (the “Authority”).
- Principal stages of the offer process are:
  - 1) Notification of the decision to bid:  
Before launching a takeover bid, the bidder shall notify the Authority and the management and supervisory bodies of the joint stock company in writing.  
In the case of a legal entity, the decision to launch a bid shall be published on: a) the website of the bidder; b) the corporate register held by the National Registration Centre; c) the respective securities register; and d) the official media of the securities’ market. The bidder and the company shall notify their respective employees and the employees’ representative bodies.
  - 2) Preparing offer documents (including an offer prospectus).  
The bidder shall submit the offer documents to the Authority for its approval within ten days of notification that the decision has been made to launch a bid.
  - 3) The Authority’s approval of the offer prospectus, within ten business days of its submission. If the Authority does not provide the decision within ten working days of receiving the offer document, the offer document will be considered to have been approved and the bidder shall have the right to publish it immediately.
  - 4) Publication of offer documents.
  - 5) As soon as the public takeover has been finalised, which is expected to occur as a result of publication of the offer document, a concentration may occur pursuant to Albanian Competition Law. The Competition Authority shall be notified of such concentration in order to issue the relevant authorization.
  - 6) Joint stock companies’ management bodies shall draft and publish a report containing their opinions about the public takeover within ten days of the date on which the offer document or an amendment to it is published. At the same time, the management shall notify the employees’ representative bodies of this report.
  - 7) Employees’ representative bodies shall draft a report regarding the consequences of such bid.
  - 8) The shareholders’ meeting of the target company decides whether to accept the bid within ten days of said bid being published.
  - 9) The company’s general manager immediately notifies the bidder and the Authority.
  - 10) The bidder shall immediately publish the information.

## 6.

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

- Mandatory offer: the (minimum) price must be no lower than:
  - a) the fair share price calculated on the basis of assessment methods which are generally accepted and recognized;
  - b) the weighted average stock market price for the last three months; and

- c) the highest price of each share paid for by the bidder (and/or persons acting in concert) in the 12-month period prior to the notice to the Authority of the bidder's intention to launch an offer. If the share price cannot be determined by this method, it shall be defined as the higher of (i) the last price at which shares in the target have been issued and (ii) the last value paid by the bidder for the target shares.
- If the offeror or persons acting in concert with him/her have acquired securities of the offeree company at a price higher than the offer price and within one year of the date on which the offer document was published, the offeror shall pay to the shareholders who have accepted the offer the price difference.

## 7.

May the bidder modify the offer price?

- The bidder may do the following up to one day before the deadline for accepting the offer:
  - a) increase the price;
  - b) offer an alternative price of equal value;
  - c) reduce the minimum amount of shares or voting rights which must be acquired in order to ensure a successful takeover bid; and
  - d) revoke a condition, if any.
- Modifications of the offer price are to be published. If the bidder publishes such modification within eight working days prior to the offer acceptance deadline, the deadline will be postponed for at least eight more days.

## 8.

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

- See above.

## 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 bid price of a mandatory offer may consist of cash or of shares marketable in the regulated market, should the shares be sufficiently liquid and active. Shareholders with voting rights shall only be offered and receive shares with voting rights.

## 11.

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

- The bidder shall notify the Authority and the management body of the company in writing prior to the takeover bid. In the case of a legal entity, the decision to launch a bid shall be published on: a) the website of the bidder; b) the corporate register maintained by the National Registration Centre; c) the respective securities register; and d) the official media of securities' market. The bidder and the company shall notify their respective employees and employees' representative bodies.

## 12.

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

- There are 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 exercise 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?

- Some protective rules in favour of the bidder are provided by the law, e.g. the 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).

## 14.

What provisions exist relating to board neutrality?

- If the board of directors of a joint stock company receive an offer, they shall appoint an external financial advisor for impartial advice on whether the offer is unfair and unreasonable. This advice shall be received in writing and shall be communicated to the shareholders through the offer response document, along with the recommendation of the company's board of directors to accept the offer.
- Should any of the directors of the company or of the bidding company have conflicts of interest, the board of directors of the company shall create an independent committee to avoid its partiality to the bid.

## 15.

What conditions are permissible for mandatory offers?

- The bid includes conditions where their fulfilment not only depends on the bidder or persons acting in concert.

## 16.

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

- Albanian legislation does not exclude the possibility of parallel transactions.

## 17.

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

- The bidder may only announce the offer if he is able to guarantee that the bidder can pay the offer price in cash as well as if he has taken all reasonable measures to guarantee any other kind of payment.

## 18.

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

- 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.
- If the board of directors of a joint stock company receives an offer, it shall appoint an external financial advisor for impartial advice on whether the offer is unfair and unreasonable.

## 19.

What are the regulatory fees for takeover proceedings?

- A fee of 1.5% of the total amount of annual transactions conducted in the stock exchange or regulated market is payable to the Authority.

## 20.

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

- An unsuccessful bid means the bidder and the persons acting in concert cannot submit another bid for the securities of that same joint stock company within one year of publication of the bid outcome.
- Administrative fines.
- Possible damages or claims from current and former target shareholders.

## 21.

What shareholding is generally required for a squeeze-out?

- 90% of the capital represented by securities in an Albanian 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.

## 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 90% of the target's capital;
  - b) the squeeze-out is exercised within three months after the end of the offer period; and
  - 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 bidder owns 90% of all shares that carry voting rights and 90% of the voting rights of the respective company, he may ask to purchase all remaining priority shares and any other shares without voting rights.

## 24.

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

- Shareholders with voting rights that have not been purchased have the right to request that the bidder purchase their shares for the price offered in the takeover bid within the next three months of the offer period ending if the bidder has acquired at least 90% of voting rights. If the bidder owns 90% of all shares, the holders of the remaining priority shares without voting rights and all other shares without voting rights may exercise such right.

## 25.

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

- No other particular requirements.



# Austria

## 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 the same or a larger interest in the target;
  - the acquirer does not control the (simple) majority of votes at general meetings; and
  - the target's articles provide for a 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 transfer of shares to a private foundation controlled by the controlling shareholders of the transferor.
- 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 company or as collateral (the Takeover Commission may prescribe an offer if the economic interests of the outside shareholders are adversely affected);
  - the control threshold is only exceeded temporarily or unintentionally, provided that shareholding is promptly reduced below the control threshold;
  - shares are acquired by way of gratuitous transfer among close relatives;
  - shares are transferred to an entity in which only shareholders or close relatives of the transferor are shareholders; and
  - the acquirer effects a squeeze-out 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 a hostile 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 the composition of the supervisory board and other sensitive ("control relevant") matters.

### 4.

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

- Acquisition of an additional 2% (or more) of the voting rights over any 12-month period by a shareholder holding more than 30% but not more than 50% of the voting rights will trigger:
  - an immediate filing obligation; and
  - an obligation to issue a mandatory offer within 20 trading days.
- General exemptions from the offer requirement also apply in the "creeping in" context.

### 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 (initial) offer period will generally require at least two months. Statutory conditions (e.g., merger control proceedings and state aid notifications) may further delay the process.
- The principal stages of the offer procedure are:
  - 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 ten trading days after announcement of the bidder's intention to launch an offer (extension to 40 trading days may be granted).
  - 2) Publication of offer documents within 12–15 trading days from filing (subject to postponement by the Takeover Commission).
  - 3) Offer period of at least two but not more than ten 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 during which the addressees of a mandatory (or successful control seeking) offer who have not tendered their shares during the initial offer period may sell their shares.

## 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.
- The weighted average share price may be disregarded by the Takeover Commission if the relevant shares are not deemed sufficiently liquid.
- 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?

- Generally, the bidder may only increase the offer price (an increased offer price also applies retroactively to acceptances).
- An increase of the offer price is not permissible, if ruled out by the bidder in the original offer document (unless in the context of a competing bid or if approved by the Takeover Commission).

## 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).
- An increase of the offer price is not permissible, if ruled out by the bidder in the original offer document (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.
- Only withdrawal trigger events outside the bidder's discretion are permissible.

## 10.

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

- A non-cash offer is **only** permissible in a mandatory or control-seeking offer **as an alternative** bid to a (mandatory) cash offer. A non-control seeking voluntary offer may only be made in the form of a share 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)
- 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.
- The target's management is under a general obligation to keep sensitive information confidential.

## 12.

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

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

## 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 and will generally not constitute "acting in concert" between the granting shareholder and the bidder.
- 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 board neutrality rule under the Takeover Directive has been implemented; i.e., the management board and the supervisory board of the target may not take any measures which may impair the shareholders' discretion with respect to the acceptance of the 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) 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 in voluntary offers.

## 16.

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

- bidder (or concert parties) 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. A bank guarantee will usually not be required.
- 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 utilization of 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, experts are usually appointed from among the "Big Four" (or certain second-tier) accountancy firms, even where a major investment bank acts as financial adviser.
- The bidder's expert has to confirm the completeness and legal compliance of the offer documents, particularly as regards the offer price, as well as the availability of financing.

## 19.

What are the regulatory fees for takeover proceedings?

- The fees of the Takeover Commission are calculated in accordance with a regressive scale ranging from 0.2% down to 0.04% of the offer volume exceeding certain thresholds, resulting, e.g., in a fee of EUR 310,000 for an offer volume of EUR 200m.
- A statutory minimum of EUR 60,000 and a statutory cap of EUR 550,000 apply.

## 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 the mandatory offer is made.
  - Administrative fines ranging from EUR 5,000 to EUR 50,000.
  - Possible claims for damages from current and former target shareholders.

## 21.

What shareholding is generally required for a squeeze-out?

- The cumulative squeeze-out threshold is 90% of the target's 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)?

- If
  - a) the 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 shares to which the offer relates.
- A rebuttable legal presumption of adequacy of the offer price per share in the context of a squeeze-out applies (a squeeze-out consideration below the offer price would be 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 provided).
- Interest (2% above the base rate.) is payable from the date the squeeze-out resolution was 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 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

## 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?

- The 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 cases of transfers between affiliated companies;
  - if another shareholder (or group acting in concert) controls the target company;
  - if the acquisition results from the exercising 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; and
  - 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 liable 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 and the documents to the Financial Services and Markets Authority (FSMA), public announcement of the main terms of the bid by the FSMA (the next working day) and FSMA approval of the offer documents (within ten 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 highest value from the following: 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 FSMA 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 FSMA 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 FSMA announces it (one working day after notification of the offer documents to the FSMA); the offer must be publicly launched 15 working days later.
- Circumstances which give rise to an offer obligation (acquisition of control).
- 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 FSMA 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, and indeed to the public (either by including such information in the prospectus and/or by a press release of the target), at the latest at the moment of the bid, so as to create a level playing field in terms of knowledge of all concerned parties.
- 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?

- 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 FSMA 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 (FSMA 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)?

- Stake building by the bidder before the offer is announced is generally permissible (subject to insider trading restrictions, especially if the bidder is carrying out a due diligence), but may trigger a requirement to disclose the bidder’s intention to launch a bid. Stake building based on the bidder’s obvious knowledge of his own intention to launch a bid is not prohibited, but other actions (such as the bidder investing in derivatives in order to gain a financial profit from the price increase resulting from the bid) may be illegal.
- 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 FSMA may require a fairness opinion.
- It is, likewise, market practice, although again not a legal obligation, for the target to also request the opinion of an investment bank on the offer price (as the target must give the FSMA and the bidder its views on the offer).

## 19.

What are the regulatory fees for takeover proceedings?

- (Limited) regulatory fees are payable to the FSMA.

## 20.

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

- The FSMA can order appropriate measures, including suspension of voting rights of the bidder (and parties acting in concert) until a mandatory offer is made.
- The FSMA 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 2.5m 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

## 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 30% 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")*

- Direct or indirect acquisition of shares which (together with an existing shareholding), confer more than 25% of voting rights.
- Direct or indirect acquisition of shares after a takeover offer after which the percentage of shares with voting rights is increased by more than 10%.
- Direct or indirect acquisition of shares after a takeover offer if, after such acquisition, the acquirer shall have more than 75% of shares with voting rights.

### *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 process 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?

- Acquisition of shares through inheritance (FBiH, RS, BD).
- Acquisition of shares through the division of marital property (FBiH, RS, BD).
- 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 (FBiH, RS, BD).
- Acquisition of shares in public issuance of shares (FBiH, RS).
- Acquisition of shares during bankruptcy proceedings (FBiH, RS, BD).
- Acquisition of shares given as collateral provided that the shares are sold within one year after acquisition (FBiH, RS).
- Acquisition of shares during a merger (FBiH, RS, BD).

- Acquisition of shares through a change in the legal form of a company (FBiH, RS, BD).
- Acquisition of shares through the process of ownership transformation (privatisation) if the acquirer had not previously acquired shares through the stock market or block transactions (FBiH, RS).
- Acquisition of shares between parties acting in concert provided that the total voting rights of these parties do not change (FBiH, RS).
- 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 (in FBiH)/six months (in RS).
- If, by acquisition of shares, the acquirer holds a percentage of shares with voting rights which are equal or less than the percentage of shares with voting rights held by another shareholder which has published a takeover offer (FBiH only).
- A legal person acquires shares from another legal person whose shareholders are directly or indirectly the same persons or Acquisition of shares due to internal restructuring (FBiH, BD).
- Acquisition of shares as substitution for payment of dividends, if permitted by law, and if the shareholders assembly approves that the acquirer can acquire the shares without publishing a takeover offer (FBiH only).
- Transfer of shares after a takeover offer between the parties acting in concert in the takeover offer (FBiH only).
- If the acquirer disposes, within six months, of shares it acquired based on a security (FBiH only).
- If the acquirer exceeds the threshold for publishing a mandatory takeover offer by at most 3%, provided that it sells the excess over the threshold to a person not acting in concert with it within three business days of the acquisition (RS only).
- Acquisition of shares by gratuitous transfer between close relatives (RS only).
- If the share of voting rights of another shareholder or other shareholders acting in concert, acquired based on a takeover offer, is greater than the share of voting rights of the acquirer (RS only).
- Acquisition of shares in issuance of shares based on pre-emption rights (RS only).

### 3.

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

- “Acting in concert” is defined as an agreement (oral or written, express or tacit) to act in coordination with respect to a) the acquisition of shares, b) the use of voting rights of shares or c) preventing third persons from launching a takeover or if one shareholder is holding the shares on behalf of another (RS only).
- A presumption of “acting in concert” exists, inter alia, where persons are connected by circumstances in which they acquire shares (such as timing and place of acquisition, 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 for the purpose of the takeover offer and 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 are jointly and severally liable for all obligations under the Takeover Act (in FBiH).

The following actions amount to “acting in concert”:

*Republika Srpska*

- If one person directly or indirectly controls another person. Control is defined as directly or indirectly holding 30% 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 are acting 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*

- Persons directly or indirectly controlling other person(s). control is defined as directly or indirectly holding 25% or more of the voting rights or shares, being under the control of members of the same group based on its establishment, and having the right to influence the management of the company on the basis of an agreement or having a directly or indirectly decisive influence to the business operations of a company.
- Companies which are considered as connected under the Companies Act.
- Natural persons if they are blood relatives in direct line or second-degree relatives, as well as marital or common-law partners.
- A company for management of an investment fund is considered as acting in concert with the investment funds it manages.

*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, 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?

### *Federation of Bosnia and Herzegovina*

- 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%) is surpassed.
- Creeping-in triggers a mandatory offer requirement.
- General exemptions from the offer requirement apply.

### *Republika Srpska*

- Acquisition of additional shares by a person who has acquired (in aggregate) less than 75% of the total voting rights by way of a takeover offer.
- Creeping-in triggers a mandatory offer requirement.
- General exemptions from the offer requirement apply.

### *Brčko District*

- A person that has acquired less than 2/3 of shares with voting rights in a takeover offer is obligated to publish a takeover offer in case of any new acquisition of shares.
- 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 offer period may take several months. Statutory conditions (especially merger control proceedings) may further delay the process.
- Principal stages of the offer process, in general:
  - 1) Signing an agreement with the Securities Registry/other body authorised to conduct the takeover offer.
  - 2) 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 began.
  - 3) The Commission makes a decision on the request within 14 days in FBiH/30 days in RS and BD.
  - 4) Publication of the offer within seven days.
  - 5) Offer period of 28 days in FBiH/30 days in RS and BD.
  - 6) Up to seven days in FBiH/ten days in RS/14 days in BD for settlement of the offer.
  - 7) Publication of the result of the offer within three days in FBiH/seven days in BD.
  - 8) Three-month sell-out/squeeze out period (if applicable).

## 6.

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

### *Federation of Bosnia and Herzegovina*

- 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 preceding the day of the offer obligation, or b) the average price on the stock market or other regulated public market in the three-month period preceding the day of the offer obligation.

#### *Republika Srpska*

- 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 preceding the day of the offer obligation and b) the average price on the stock market or other regulated public market in the six-month period preceding the day of the offer obligation, provided that the shares have been traded on the stock exchange in a volume of at least 3% of the total number of shares within the six month period, and that they have been traded in a volume of at least 1% of the total number of shares per month in a three-month period within the six-month period.
- If the trading volume requirements from point b) above have not been met, the minimum price cannot be lower than a) the highest price paid by the bidder or persons acting in concert with it in the one year preceding the day of the offer obligation, or b) the book value of the shares based on the latest annual financial report.

#### *Brčko District*

- 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 preceding the day of the offer obligation, b) the average price on the stock market or other regulated public market in the three-month period preceding the day of the offer obligation, or c) the nominal value of the shares if they were not traded on the stock market or other regulated public market.

## 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?

- The published takeover offer may only be withdrawn in the case of a competing offer or if the target becomes bankrupt.

## 10.

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

- In FBiH the payment in the takeover offer can be in cash, shares or a combination thereof.
- This is not expressly prescribed in RS and BD and the relevant Takeover Acts only refer to cash.

## 11.

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

- The obligation to make a public announcement of intention to launch an offer is triggered when the bidder (including any persons acting in concert) acquires the required amount of shares to publish a mandatory takeover.
- In FBiH the Securities Commission may also request from a natural or legal person a statement as to its intention to publish a takeover bid in cases where the situation on the securities market indicates a possible takeover, e.g.:
  - when circumstances indicate the existence of a takeover agreement;
  - when the scope of trading and the prices of the target company's shares 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 may permit due diligence by the bidder if it deems this to be in the target's best interest, however no such right/obligation is provided by the Takeover Act.

## 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 publish a reasoned opinion on the offer within seven days in FBiH and BD/ten days in RS after the publication of the offer.

## 15.

What conditions are permissible for mandatory offers?

- The bidder may not make his offer conditional except by excluding encumbered shares from its offer. Voluntary takeover offers may be conditioned by establishing thresholds necessary for the success of the offer. In BD, the takeover offer may be conditioned by reaching a threshold of (together with already acquired shares) 50% of all shares with voting rights in the company.

## 16.

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

- From the moment the obligation to publish 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 which are subject of the offer by depositing the full amount on the bank account of the Securities Registry or by providing an irrevocable bank guarantee for the full amount. Additionally, in RS and BD a loan agreement with a bank may be provided.
- In FBiH, if payment is made by way of shares, or combined cash/share payment, the shares which are offered as payment must be deposited to a separate account with the Securities Registry.

## 18.

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

- No such obligation is prescribed in the Takeover Act but in the takeover process the bidder usually relies on the advice of its professional advisers.

## 19.

What are the regulatory fees for takeover proceedings?

In general the fees for conducting a takeover offer are as follows:

### *Federation of Bosnia and Herzegovina*

- 0.1% of the total nominal value of the securities for which the offer was made, but not less than BAM 3,000 (approx. EUR 1,500) or more than BAM 10,000 (approx. EUR 5,000) for the fees regarding the approval of the offer by the Commission.
- Regarding the activities of the Securities Registry: a fee of BAM 3,000 (approx. 1,500) is payable for establishing and maintaining records of securities for the acceptance of takeover bid. BAM 2 (approx. EUR 1) per shareholder who applied for the takeover offer for transfer of information to the recording account, registration and deletion of suspension of the securities trade, preparing and delivering reports to shareholders who applied for the takeover bid. 0.1%, of the value of offered shares per the price in the takeover bid, but no less than approx. EUR 750 (BAM 1.500) for preparation and processing of takeover bid. 0.2% of the value of bought shares per application (per share-holder who sold its shares), but no less than approx. EUR 5 (BAM 10) per application, plus actual bank expenses for conducting the takeover bid following its success. 0.1% of the nominal value of the transaction, but no less than approx. EUR 5 (BAM 10) per transaction for transfer of the shares based on the purchase in the takeover bid.

### *Republika Srpska*

- 0.8% of the amount of the offer, but at least BAM 1,000 (approx. EUR 500) for the fees regarding the approval of the offer by the Securities Commission.
- BAM 800 (approx. EUR 400) plus 0.16% of the value of the purchase shares in the takeover offer for the services of the Securities Registry.

### *Brčko District*

- 0.1% of the total nominal value of the securities for which the offer was made but not less than BAM 1,000 (approx. EUR 500) or more than BAM 10,000 (EUR 5,000) for the Securities Registry.
- Fees for the Securities Registry for transfer and registration of the shares and other necessary actions.

## 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 responsible 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 250 to BAM 2,500 (approx. EUR 125 to EUR 1,250) (up to BAM 5,000—approx. EUR 2,500 for especially serious violations) for responsible natural persons and BAM 5,000 to BAM 15,000 (approximately EUR 2,500 to EUR 7,500) (up to BAM 45,000—approx. EUR 22,500 for especially serious violations) 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 a shareholding of at least 95% of shares with voting rights is required for a squeeze out.
- In RS, a shareholding of at least 90% of shares with voting rights is required for a squeeze out.

## 22.

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

- In FBiH and BD the Securities Registry will transfer the remaining shares of minority shareholders 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 takeover offer that a squeeze-out would be carried out; and c) the consideration required for payment of the outstanding shares has been provided.
- In RS, the shareholders' assembly of the company must adopt a decision on the squeeze out of minority shareholders which is not directly linked to completing a prior takeover offer.

## 23.

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

- In FBiH, and BD a squeeze out can be performed only if the bidder acquired more than 95% of the shares with voting rights in a takeover offer, and the squeeze out can be requested within three months from the expiry of the takeover offer.
- In RS squeeze out is prescribed by the Companies Act and is not directly linked to a prior takeover offer.

## 24.

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

- In FBiH and RS the Securities Registry 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% in FBiH/90% in BD of the voting rights in a takeover offer; b) the sell-out request of the minority shareholders was made within three months after the expiry of the takeover offer.
- In RS, if a shareholder holds at least 90% of shares in a company, the minority shareholders may request to sell out their shares to the majority shareholder. In RS a sell-out is prescribed by the Companies Act and is not directly linked to a takeover offer.

## 25.

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

- Generally, the provisions on squeeze-outs are applicable to sell-outs as well.



# Bulgaria

## 1.

What transactions/actions generally trigger a mandatory offer?

- Acquisition of more than one-third of the voting rights in a listed company in which no one, either directly or through related parties, holds more than 50% of the voting rights, or more than 50%, (or two-thirds) of the voting rights, respectively. "Acquisition" includes: a) direct acquisition; b) acquisition through related parties; c) acquisition by persons acting in concert who jointly hold more than 1/3, 50% or 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 1/3, 50% or 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 the relevant interest is exempted if no change of control in economic terms has occurred (e.g. intra-group transfers of the interest): not explicitly regulated but generally accepted.
- The acquirer of a relevant interest is exempted from the offer requirement if the relevant 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 1/3 threshold if it has owned 5% and has launched a voluntary offer to acquire more than 1/3 of the voting rights and, as a result of the offer, exceeded the 1/3 threshold.
- The acquirer is exempted from launching a mandatory offer at the 2/3 threshold if it:
  - already holds 50% of the voting rights and has exceeded the 2/3 threshold as a result of a capital increase;
  - the acquirer is exempted from launching a mandatory offer at the 50% and the 2/3 thresholds if it:
  - has exceeded the relevant threshold within a year after launching the mandatory offer at the 1/3 or the 50% threshold, respectively; or
  - 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 it:
  - has exceeded a relevant threshold and within 14 days has acquired additional shares exceeding the next relevant threshold;
  - has acquired shares exceeding several thresholds in one single step; and
  - has exceeded a threshold relevant to a mandatory offer 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 1/3 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 1/3 but not exceeding 2/3 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 voluntary offer has been launched;
  - 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; or
  - the threshold has been exceeded as a result of a capital increase.
- A person who holds at least 5% of the voting rights and wishes to acquire more than 1/3 of the voting rights, may 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 20 business days to approximately two 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 three days after expiry of the offer period.
  - 5) Settlement of the offer price: within seven 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 months preceding the offer registration, or the latest date by which the offer must have been registered; and c) maximum consideration per share paid by the bidder, its related party, or any of the parties acting in concert, within the six months preceding the offer registration or the latest date by which the offer must have been registered; if the price cannot be determined by this method then 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), it may not exercise its 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 (by a shareholder holding more than 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?

- If a person acquired, whether directly, through related parties or indirectly, more than 90% of the voting rights and fails to register an offer within 14 days after the acquisition, the latter shall notify the shareholders, the regulated market and FSC of his intentions to register an offer at least three months in advance.
- 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.
- The management and employees of the company are bound by a continuing confidentiality obligation. The general rules regarding insider information apply. The bidder's access to such information will trigger the company's obligation of disclosure to the public.

## 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 whose primary objective is to frustrate the acceptance of the offer or inflict material difficulties or additional material expenses for the offeror. Said difficulties or expenses may include the issuing of shares or concluding transactions which would result in a significant change to the property of the company, unless the general meeting has approved such actions in advance.
- The management body of the target is not prevented from seeking competing bidders.
- Upon receipt of the offer, the management body shall issue a reasoned opinion on the offer, including on the strategic plans of the bidder for the company and the effects on the company and its employees. The opinion shall also contain information on existing voting agreements (in so far as the management is aware of such), the number of shares in the company held by members of the management and whether such members intend to accept the offer.

## 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:
  - a) for deals up to BGN 50m (approx. EUR 25m) 0.075% of the deal amount; and
  - b) for deals exceeding BGN 50m (approx. EUR 25m): BGN 37,500 (EUR 18,750) plus 0.0375% of the amount exceeding BGN 50m.
- 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 5,000 and EUR 10,000 for first violation and between EUR 10,000 and EUR 25,000 for any subsequent violation.
- Potential claims for damages by current or former shareholders of the target company.
- The bidder's voting rights with respect to all shares in the company 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 as a result of an offer, purchases 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.





# China

## 1.

What transactions/actions generally trigger a mandatory offer?

- A mandatory offer will only be triggered when a listed company is acquired.
- A mandatory offer is generally triggered where an offeror has acquired 30% of the issued shares of a target company via securities transactions through the stock exchange and the offeror continues to increase its shareholding in the said target company.  
A mandatory offer is also triggered where the interests in the shares of a target company indirectly held by an offeror through investment relations, deals or other arrangements exceed 30% of the issued shares of the target company, even if the offeror is not a direct shareholder of the said target company.

## 2.

What are the principal exemptions from the mandatory offer requirement?

- The offeror shall file an application for exemption to the China Securities Regulatory Commission ("CSRC").
- An exemption from the mandatory offer requirement is applicable only under certain circumstances (e.g. the share transfer is between two entities both controlled by the same actual controlling party, and such share transfer will not lead to a change to the actual controlling party of the target company).
- The offeror applying for exemption shall engage a law firm or other professional organisation to issue an opinion.

## 3.

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

- "Acting in concert" means the act or fact of the investors working together with other investors through an agreement or other arrangement to jointly increase the quantity of voting shares in a listed company under their control.
- Investors will be deemed to be acting in concert under certain circumstances (e.g., there is equity control relation between investors; investors are controlled by the same entity; etc.).
- Persons acting in concert shall compute their shareholding on a consolidated basis. The shareholding computed by an investor shall include shares registered under its name, as well as shares registered under the names of persons acting in concert with such investor.

## 4.

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

- There is no specific “creeping-in” provision under Chinese law.

## 5.

How long does it take to complete a mandatory offer?

- The minimum purchase period specified under the mandatory offer is 30 days and the maximum period is 60 days, unless there is a competing offer.
- The share transfer concerned shall be settled and registered within three business days upon the expiration of the purchase period specified under the mandatory offer.

## 6.

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

- The offer price for shares of the same class shall not be lower than the highest price paid by the offeror for such shares within a six-month period preceding the date of the announcement on takeover by offer indicated.
- If the offer price is lower than the mathematical average value of the daily weighted average prices for such shares for a period of 30 business days before the date upon which the offeror makes the announcement, the financial consultant engaged by the offeror shall analyse the trading of such shares within the past six-month period and state whether the share prices are being manipulated, whether the offeror has failed to disclose persons acting in concert with the offeror, whether the offeror has obtained the shares of the company by way of other payment arrangements during the past six months, the reasonableness of the offer price, etc.

## 7.

May the bidder modify the offer price?

- Where an offeror needs to modify the offer price, the offeror shall promptly make an announcement, state the specific change matters, and notify the target company.
- An offeror shall not modify the offer price within 15 days before the expiry of its takeover offer, unless there is a competing offer.

## 8.

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

- Yes, the bidder is entitled to modify the terms of the offer in compliance with the law. If an offeror needs to modify the offer, the offeror shall promptly make an announcement, state the specific change matters and notify the target company.

## 9.

Is the bidder entitled to withdraw the offer?

- During the purchase period specified by a mandatory offer, the offeror shall not withdraw its offer.
- An offeror can withdraw the offer before announcing the report on the mandatory offer. However, the offeror shall announce the reason for withdrawal, and shall not propose another mandatory offer to the same target company within 12 months of making such withdrawal announcement.

## 10.

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

- If an offeror makes a mandatory offer for the purposes of delisting a listed company or makes a mandatory offer after being turned down by the CSRC for an application for exemptions, the offeror shall pay cash for the takeover.
- If an offeror pays for a takeover with shares pursuant to the law, a cash option shall also be made available for the shareholders of the target company simultaneously.

## 11.

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

- Once the mandatory offer is triggered, the offeror shall prepare a report on the mandatory offer and make an indicative announcement on the summary of the report.

## 12.

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

- There are no specific legal provisions.

## 13.

What deal protection measures may a bidder implement?

- In order to protect the deal, the offeror needs to commission a securities company to apply for interim custody of the shares belonging to the shareholders who agree to accept the offer. The shares in interim custody cannot be transferred within the purchase period.

## 14.

What provisions exist relating to board neutrality?

- According to the PRC Company Law, directors shall bear the duty of care and duty of loyalty to the company subject to the laws, regulations, and articles of association of the company.
- According to the Administrative Measures on Takeover of Listed Companies ("AMTLC"), the directors of a target company shall bear the duty of care and duty of loyalty to the target company and shall treat all offerors fairly. The decision made and measures adopted by the board of directors of the target company regarding a mandatory offer shall benefit the target company and its shareholders by safeguarding their interests. The board of directors shall not abuse its official powers to create inappropriate obstacles for the takeover, shall not use company resources to provide any form of financial assistance to the offeror and shall not harm the legitimate interests of the target company and its shareholders.
- According to the AMTLC, the board of directors of the target company shall investigate the qualification, creditworthiness and intent of takeover of the offeror, analyse the terms of the offer, make a recommendation to the shareholders on whether to accept the offer, and also engage an independent financial consultant to issue a professional opinion.
- Also, the AMTLC stipulates that the directors of the target company shall not resign during the period of a takeover by offer.
- By amending the articles of association, the shareholders of the target company may apply stricter rules on the neutrality of the board.

## 15.

What conditions are permissible for mandatory offers?

- Conditions set in a mandatory offer announcement shall be subject to the relevant laws and regulations.

## 16.

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

- A bidder who makes a mandatory offer shall not, during the period from making the announcement to the expiry of the purchase period, purchase the shares of the target company in a form other than that stipulated in the offer and on terms more favourable than the offer.

## 17.

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

- The financial consultant engaged by the offeror shall conduct adequate due diligence on the offeror's capacity to make payment and their source of funds. They shall then issue an examination opinion.
- At the time of the announcement of the purchase report, the offeror shall submit the examination opinion of the financial consultant regarding the creditworthiness records of the offeror for the past three years, the legitimacy of the source of funds for the offer, the capacity of the offeror to perform the relevant undertakings and the veracity, accuracy and completeness of the relevant disclosed information.
- At the time of the announcement of the mandatory offer, the offeror shall provide at least one of the following arrangements to ensure that it has the capacity for performance:

- 1) where the offeror pays the purchase price by cash, a performance deposit of not less than 20% of the total price shall be deposited with a bank designated by the securities registration and clearing organization. Where the offeror pays the purchase price by listed securities, the said securities used for payment shall all be placed under the custody of the securities registration and clearing organization;
- 2) a letter of guarantee issued by a bank regarding the takeover by offer; or
- 3) a written guarantee issued by the financial consultant undertaking that it will bear joint and several liability for payment of the purchase price if the offeror does not make such payment.

## 18.

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

- It is mandatory for the bidder to appoint an independent external financial consultant and an external lawyer.
- It is also mandatory for the target company to appoint an independent external financial consultant who shall not have an association relationship with the financial consultant appointed by the bidder.
- A professional organisation registered in China and qualified to engage in financial consultancy business can be engaged as a financial consultant. Any offeror who fails to engage a financial consultant shall not propose a mandatory offer of a listed company.
- The duties of the financial consultant include but are not limited to carrying out a due diligence process with regards to the offeror, making an appraisal of the financial and operating situation of the target company, tutoring the offeror in the respect of standardized operation of the securities market, submitting documents to the CSRC when entrusted to do so by the offeror, issuing opinions on required matters and supervising the offeror and the target company to ensure they comply with the laws.

## 19.

What are the regulatory fees for takeover proceedings?

- The regulatory fees differ depending on the stock exchanges.

## 20.

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

- Where the offeror making a mandatory offer fails, after the term of such offer expires, to pay, as agreed upon, the takeover price to or to purchase shares from shareholders who have accepted the mandatory offer, the offeror shall be prohibited from purchasing any listed company within three years from the day when the aforesaid fact occurs, and the CSRC shall reject the application documents submitted by such offeror and its affiliates thereof.

## 21.

What shareholding is generally required for a squeeze-out?

- There is no specific “squeeze-out” provision under Chinese law.

## 22.

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

- There is no specific “squeeze-out” provision under Chinese law.

## 23.

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

- There is no specific “squeeze-out” provision under Chinese law.

## 24.

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

- Where the target company no longer satisfies the listing criteria upon expiry of the purchase period, the shares of the listed company shall be delisted by the stock exchange pursuant to the law. Before the takeover is finally completed, the remaining shareholders who still hold the shares of the target company shall have the right to sell their shares to the offeror.

## 25.

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

- Terms of the sell-out shall be equal to those of the mandatory offer.
- request for a sell-out shall be made during a reasonable period, as stipulated in the purchase report.
- The offeror must purchase such sell-out shares if the relevant requirements have been met.





# Croatia

## 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.

## 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, by division of marital assets or as a creditor in bankruptcy proceedings 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 through reorganisation).
- The sale or transfer of shares in a credit institution acting as a fiduciary creditor are exempted, provided that the sale or transfer occurs within six months after the acquisition.
- A person that, through acquisition of shares, acquires a percentage equal to, or smaller than the percentage that another person holds in the target company is also exempted from the mandatory offer requirement.
- Acquisitions of shares in cases of the target company undergoing a process of financial recovery.

## 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 obligations.
- 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?

- Creeping-in is no longer regulated. A single threshold of 25% has been introduced.

## 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, requires 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 seven 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 seven days.
  - 6) Three-month sell-out period.

## 6.

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

### *For liquid shares*

- The price in the takeover bid is regulated so that the offeror has to offer the higher of the following values:
  - a) the highest price for which the offeror bought the shares within a period of one year prior to the obligation to publish a takeover bid; or
  - b) the weighted average price if it is higher than the price stated in a) above. For liquid shares, the weighted average price is calculated as a weighted average of all prices achieved on the stock exchange in the three months preceding the day on which the obligation to publish takeover bid arose.

### *For non-liquid shares*

- For non-liquid shares, meaning shares which have been traded for less than 1/3 of the trading days in the period of three months preceding the day on which the obligation to publish takeover bid arose, the highest price for which the offeror bought shares in the period of one year before the obligation to publish takeover bid arose is compared with the price from the fair price study that has been audited by an independent official auditor.
- If the bidder, or a person acting in concert, acquires, within one year after the end of the offer period, shares in the target that were the subject of the

takeover for a price higher than the offer price, this will trigger the obligation to pay the difference to all the shareholders who accepted the offer within seven days from the acquisition of such additional shares.

## 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.
- Any modification of the offer will apply retroactively to all shareholders who have already accepted the initial offer.
- Requests for an amendment to an offer should be submitted to the Takeover Agency at least ten 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 of the withdrawal.

## 10.

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

- The purchase price may be paid in cash or alternatively in substitute shares or a combination of cash and substitute shares. However, in case of non-cash and combined offer, bidder is obliged to submit a cash offer as an alternative.

## 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, in cases where market conditions indicates the possibility of a takeover, request that any legal or natural person issues a sworn statement as to its intention with respect to the launch of a takeover bid. Said cases may include:
  - when circumstances indicate the existence of a takeover agreement;
  - when the volume of trading and the price of the target company's shares 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 a 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 the deal protection measures which a bidder may implement.
- However, there are certain deal protection measures that a target company may implement (i.e. "breakthrough rule") which apply only if included in the target company's statutes at the moment the takeover offer is published. The respective measure provides, inter alia, that, during the offer period, restrictions on the transfer of the target's shares and restrictions on the voting rights of the target's shares, as prescribed by either (i) the target's statute, (ii) an agreement between the target and its shareholder(s) or (iii) an agreement between the target's shareholders, can be temporarily suspended for the duration of the offer period.

## 14.

What provisions exist relating to board neutrality?

- The management board of the target must, within ten days after publication of the bid, 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, acquire or sell treasury shares or act in such manner (with purpose) which would frustrate the offer.

## 15.

What conditions are permissible for mandatory offers?

- The only permissible condition on mandatory offers is the obligation to purchase only unencumbered shares.
- Voluntary offers may also be subject to a minimum acceptance condition.
- Offers may not be subject to approval by the Croatian competition authority 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 means of (a) a cash deposit, (b) a bank guarantee, or (c) shares deposited with the depository exchange (for non-cash and combined offers).

## 18.

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

- An external expert needs to be consulted if the shares were not traded for a sufficient number of days (i.e. non liquid shares). The external expert will, in such case, determine the price of non-liquid shares.

## 19.

What are the regulatory fees for takeover proceedings?

- A fixed fee of HRK 2,000.00 (approx. EUR 260.00) plus 0.2% of the aggregate consideration (which cannot exceed HRK 5m (approx. EUR 660,000.00)) is payable to the Takeover Agency for the approval for the takeover offer.
- A fixed fee of HRK 1,000.00 (approx. EUR 130.00) plus HRK 20,000.00 (approx. EUR 2,600.00) is payable to the Takeover Agency for (i) the approval for the amendment of the takeover offer and (ii) the approval for the use of exemption from mandatory offer requirement.

## 20.

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

- Statutory suspension of the bidder's voting rights (and parties acting in concert) until a mandatory offer is made.
- A penalty ranging from HRK 200,000.00 (approx. EUR 25,000.00) to HRK 1m (approx. EUR 130,000.00).
- 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)?

- After a successful takeover bid in which the bidder has acquired 95% or more of the voting shares and during a three-month period following the end of the offer period.
- The request must be submitted to the Central Depository & 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 to the amount of the squeeze-out price.

## 23.

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

- The adequacy of the consideration (squeeze-out price) is 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.
- The majority shareholder must, prior to the shareholders' meeting being convened, 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?

- The shareholders are entitled to a sell-out during a period of three 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 to the amount of the sell-out price.
- The request must be submitted to the CDCC.
- The offer price will be deemed adequate consideration.

## 25.

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

- No other particular requirements.





# Czech Republic

## 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 it (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 was already a controlling entity of the target and has undertaken (in compliance with the Commercial Code), either within 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 its own conduct and, at the time of the acquisition, it could not reasonably presume that he would reach the threshold. In these circumstances, the acquirer and persons acting in concert with it 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 it may exercise its voting rights.

- The acquirer of a controlling interest may be exempted from the mandatory offer requirement if it has only temporarily exceeded the threshold, i.e., it has already decreased its 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 it exceeds the threshold:
  - in order to avert the insolvency of the target;
  - 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 four 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 it 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 it 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 six months prior to the triggering of the mandatory offer (the “average price”).
- If the bidder (or parties acting in concert) purchase target shares for a consideration higher than the offer price within six months after the end of the offer and acceptance period, 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;
  - the amount of the premium price or of the average price was substantially affected by rate distortion, other disturbance or other extraordinary circumstances;
  - the amount of the average price was substantially affected as a result of the share certificates' extraordinary low liquidity; 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 the 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?

- The terms of a mandatory offer may only be improved (improvement also applies retroactively to acceptances).
- The 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 market. 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 5m (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 it has enough funds to finance 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.
- A monetary fine of up to CZK 50m (approximately EUR 2m), imposed by the CNB.
- 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, then it 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, it will be subject to a monetary fine of up to CZK 50m (approximately EUR 2m), imposed by the CNB, and possible claims for damages from the minority shareholders.



# France

## 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. 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. If agreements and instruments are held which have a similar economic effect, then these shall not be taken into account when determining the percentages of capital or voting rights.
- 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.

- “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 1% or more of total equity securities or voting rights within a period of less than 12 consecutive months 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.

## 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 six 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 1% 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.
- Other exemptions where AMF<sup>1</sup> 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 of shareholders;
  - merger or asset contribution subject to the approval of the general meeting of shareholders;
  - merger or asset contribution subject to the approval of the general meeting of shareholders, 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 by the applicant or by a third party, acting alone or in concert;
  - holding of a majority of the company’s share capital by the applicant or by a third party, acting alone or in concert, further to an offer made following the normal procedure;

<sup>1</sup> “AMF”: French Financial Markets Authority in charge of the control of takeover bids.

- transfer of equity securities or voting rights between companies or persons belonging to 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;
- merger or asset contribution of a company holding (the “holder”) 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 merged or contributed holder; and
- allocation of double voting rights between 3 April 2014 and 31 December 2018 under the specific conditions set out in Act 2014-384 of 29 March 2014.

### 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; and
  - 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.

### 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 1% 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.
- 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 ten 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 five trading days after the AMF has issued its statement of compliance, the target company must file a draft reply document with the AMF<sup>2</sup>.
  - 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 (including the independent appraiser's report, if any). 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 nine 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.
- 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 five 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.

<sup>2</sup> In any event, the draft reply document may not be filed before the opinion of the works council of the target company or the date on which the works council is deemed to have been consulted, as provided by Article L. 2323-23 of the French Labour Code.

## 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; and
- 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<sup>3</sup>, 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<sup>4</sup>, 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 program.
- 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?

- Subject to the powers expressly granted by the general meeting of shareholders and subject to the company’s interests, the target’s board is entitled to take any measures which are likely to frustrate an offer.
- If the target’s articles of association have opted in to the prohibitions on frustrating actions then the target’s general meeting of shareholders shall have to first authorise such frustrating actions.
- The target’s articles of association can provide that the prohibitions on frustrating actions shall apply to all offers or only in a case of bidders having implemented the board neutrality rule.

## 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).
- Since October 2014, mandatory offers are conditional upon the offeror having received acceptances with regard to shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 50% of the company’s equity interests or voting rights. In the event that the offeror, and persons acting in concert with it, do not obtain an amount in aggregate equal to more than 50% of company’s equity interests or voting rights, the offer lapses. As a result of the lapse of the offer, voting rights of the securities; (i) held by the offeror and persons acting in concert with it; and (ii) exceeding 30% of the voting rights or exceeding the number of securities held before the mandatory offer plus 1%, shall be frozen for each shareholders’ meeting until the offeror holds 50% of the company’s equity interests or voting rights. In addition to the freezing of the previously mentioned voting rights, the offeror shall only be authorised to increase its holding of companies’ securities through a new takeover bid and after prior disclosure to the AMF.

<sup>3</sup> 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.

<sup>4</sup> “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.

## 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; and
- 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 ten 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 ten 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

## 1.

What transactions/actions generally trigger a mandatory offer?

- Control, i.e. holding, directly or indirectly, 30% or more of the voting rights in the target company.
- How shares or voting rights have been acquired (e.g. acquisition by sale and purchase, inheritance, through capital increases, capital decreases, mergers, etc.) is irrelevant in determining whether a person has gained control.
- There exist comprehensive rules providing for the attribution of voting rights conferred to shares which are held by third parties (e.g. subsidiaries, trustees, third parties with whom the bidder is acting in concert).

## 2.

What are the principal exemptions from the mandatory offer requirement?

- Subject to a respective 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 and 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 any arrangement (be it as an agreement or by other means, be it in written or merely oral form) with other shareholders on the joint exercise of voting rights, or other measures taken outside shareholders' meetings, to permanently and substantially 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, the legislator has made “creeping-in” almost impossible to disguise by broadening the notification obligations on voting rights. Such notification obligations are triggered even if the bidder has not become owner of the respective shares, e.g. upon the conclusion of an SPA, share SWAPS, option agreements and even irrevocable undertakings. A person failing to abide by these extended notification obligations faces two main legal consequences: First: BaFin may impose fines. Second: No rights from shares can be exercised as long as notification obligations have not been discharged.

## 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 for mandatory offers 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, it must disclose such control to BaFin and the public domain within seven calendar days.
  - Within four weeks upon such publication, the bidder must submit a draft offer document to BaFin.
  - Generally, BaFin will inspect and approve the offer document within five to ten business days.
  - Once BaFin approves the offer document,
  - the bidder must immediately publish the offer document. Publication triggers the start of the offer period, which must run for at least four weeks.
  - A mandatory offer is to be completed two weeks after the end of the offer period.

## 6.

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

- The statutory 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 offer decision (or the announcement of having gained control); or b) the highest price paid or agreed to a shareholder within a period of six months prior to the disclosure of the offer document.
- Any price higher than the offer price that has been paid or agreed to during the acceptance period or (outside the stock exchange) within one year after the end of the acceptance period generally will affect the offer price, as it has to be offered to all shareholders.

## 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. Furthermore, the bidder may offer shares in addition to the already offered cash 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 offer 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?

- No, the offer must be binding. Hence, 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 document to BaFin, failure to submit the offer document within the four-week period may result in fines or in the prevention of 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 be either in cash (i.e. euros) or liquid shares (i.e. shares which are traded at a regulated stock exchange).

## 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 its 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?

- In most of the friendly takeover procedures, the bidder is given the opportunity to carry out a due diligence. Typically, such due diligence is completed prior to the offer decision.
- The management of the target must, however, approve a due diligence, but is generally under no obligation to do so.

- As the management of a German stock corporation is bound by strict confidentiality rules, the due diligence must be subject to customary confidentiality undertaking of the bidder, stipulating specific rules on sensitive information (such as clean team access only, staggered disclosure, etc.).
- If a bidder becomes aware of inside information during the due diligence process, the bidder may continue to pursue his mandatory offer without engaging in prohibited insider dealing, provided that, at the point of approval of the merger or acceptance of the offer by the shareholders of the target company, any inside information has been made public or has otherwise ceased to constitute inside information. This exemption does not apply in the case of mere stake building below the 30%-threshold. In any case, the bidder should neither change the offer price nor make any parallel transactions once it has become aware of inside information.

## 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").
- Another challenge is to deal with hedge funds which frequently build substantial stakes subsequent to an announcement of a public takeover offer. Generally, it is not recommendable to provide for a high minimum acceptance threshold (e.g. 75%) in the offer document as this may enable hedge funds to de facto block a transaction. Hence, if one believes hedge funds will become engaged, it is advisable to either abstain from a minimum acceptance threshold or to not set it above 50.1%.
- If the bidder is not very concerned about a failed transaction but wants to make sure that certain events happen or do not happen, the bidder may 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; and
  - 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 outside the offer (in parallel transactions)?

- Generally, the bidder may acquire target shares in parallel transactions outside the offer unless it has become aware of inside information during a due diligence process or otherwise.
- If the bidder acquires target shares outside the offer for a higher consideration in the period between the publication of the offer document and the publication of the offer 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 it has available the funds necessary to entirely fulfil the offer on the settlement date.
- For a cash offer prior to publication of the offer document, the bidder must also provide a written statement from a bank confirming that the bidder has taken the necessary measures to ensure financing.
- In the offer document, 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.
- Furthermore, in most cases the management board and/or the supervisory board also engage financial and/or legal advisors in the context of an offer process.

## 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 document.

## 20.

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

- An administrative fine by BaFin of up to EUR 1m
- 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.
- Provided that the bidder has published an offer document, but does not discharge its obligations hereunder, the bidder must pay interest to the target's shareholders on the offer consideration in the amount of five 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.

90% of the shares directly held by the bidder suffice in cases where the bidder is a stock corporation and if the target is to be merged into the bidder as transferor entity.

## 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 three 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, on the basis 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 directly or indirectly 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.
- In case that by such appraisal procedure a higher cash compensation has been determined, all minority shareholders (and not only those who have initiated the appraisal procedure) are entitled to the additional cash compensation.

## 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

## 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, 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, acquiring control of the target or frustrating the successful outcome of a bid.
- The voting rights through both direct and indirect shareholdings, 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”). If small amounts of shares are gradually acquired, then 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 to the end of the acceptance period, lasts 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 National Bank (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. The decision of the Authority shall be passed within ten business days following the submission of the takeover bid.
  - 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) if available, the volume-weighted average stock market price for the 360-day period preceding the date on which the bid was submitted to the Authority for approval, also taking into account certain specific factors;
  - 4) 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;
  - 5) the aggregate of the contracted call price and the commission for a call or put option fixed in an agreement between the bidder and affiliated persons, as concluded within the 180-day period preceding the date when the bid was submitted;
  - 6) 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
  - 7) the amount of equity capital per share based on the latest audited, consolidated annual report of the target.If the securities of the bidder are listed on more than one regulated market, the highest price from the average prices calculated for each

regulated market shall be taken into consideration, provided that the official exchange rate published by the Hungarian National Bank on the day of the transaction is used when changing to forints.

## 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 published by the bidder and 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). The bidder shall publish the extension before the original time limit expires.

## 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 the target's management (at the bidder's request) has provided any information to the bidder concerning the target's operations before the publication of the bid, 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 on any 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 frustrate 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.
- Despite the above, it shall not be construed as a violation of the restrictions prescribed in the articles of association if the board of the target company carries out an action in an event or in a manner specified in a resolution adopted by its general meeting which was convoked after the takeover bid had been launched, or after it had received information concerning the bid.

## 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 by means of:
  - cash;
  - government securities issued by any Member State of the European Union or the OECD; and
  - 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 two 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?

- HUF 800,000 (approx. EUR 2,600) is currently payable to the Authority for 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 its 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 (approx. EUR 315) to HUF 2bn (approx. EUR 6,35m).
- 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, in connection with the target's remaining shares, exercise their squeeze-out right within three months of the closing date of the relevant mandatory or voluntary offer 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 three months of 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, depending on which of the two 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 to do so by the minority shareholders, within 90 days following the day on which the notice regarding 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

## 1.

What transactions/actions generally trigger a mandatory offer?

- Direct or indirect shareholding exceeding 30% of the share capital or of the voting rights obtained through acquisitions or through an increase in voting rights, also through acting in concert.
- Acting in concert by parties with an aggregate shareholding of more than 30% of the share capital or of the voting rights.
- For SMEs, by-laws can establish a threshold different to the one indicated above. Such threshold shall not be lower than 25% nor higher than 40%.
- For companies other than SMEs, direct or indirect shareholding exceeding 25% of the share capital obtained through acquisition, also through acting in concert, in the event there are no other shareholders holding a higher participation.
- Creeping-in, also through acting in concert.

## 2.

What are the principal exemptions from the mandatory offer requirement?

*The principal exemptions apply in the following cases:*

- The shareholding exceeding the thresholds set above is held as a result of a voluntary global takeover bid.
- The thresholds set above are exceeded, but another shareholder or other shareholders jointly hold the majority of the voting rights exercisable in the ordinary shareholders' meeting. The acquirer must notify the Takeover Commission ("Consob") and the market that no agreements or plans with these other shareholders exist.
- The thresholds set above are exceeded:
  - by a recapitalisation or another measure directed at strengthening the equity of a listed company in crisis;
  - by subscribing, in the absence of other purchases made or agreed to in the prior twelve months, 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;
  - but the acquirer undertakes to dispose of the excess shares to non-related parties or to reduce the surplus voting rights within 12 months and not to exercise said voting rights;
  - due to mergers or spin-offs; and
  - due to inheritance or donation.

- The shareholding exceeding the thresholds set above 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).
- The shareholding exceeding the thresholds set above is acquired by the Italian Ministry of Economy and Finance, before December 31st, 2017, in the execution of exceptional measures directed at strengthening the equity of an Italian bank.

### 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, even if 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 to consult 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 if the agreement provides for the purchase of such shares or financial instruments; and
  - 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; and
  - 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 or the increase of voting rights by more than 5% by a shareholder who already holds more than 30% of the voting shares without having the majority of voting rights will trigger a mandatory offer requirement. General exemptions from the offer requirement apply.
- A mandatory offer is also triggered in the 12 months subsequent to the close of an unsolicited bid (i.e. a prior partial bid) if:
  - the bidder, or persons acting in concert, have acquired shareholdings exceeding 1% (including acquisitions by forward contracts expiring at a later date); and
  - 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 to 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 relevant threshold in the case of a mandatory offer).
  - 2) Consob approval within 15 days (one suspension of term possible if Consob requires further information).
  - 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 no later than the first day of the acceptance period.
  - 5) The acceptance period will be agreed with the stock exchange company. A period of 15–25 days is obligatory for mandatory offers triggered by:
    - (a) direct or indirect shareholding exceeding 30% of the share capital or of the voting rights obtained through acquisitions or through increase of voting rights;
    - (b) acting in concert by parties with an aggregate shareholding of more than 30% of the share capital or of the voting rights; and
    - (c) direct or indirect acquisition of an additional 5% of shares or the increase of voting rights by more than 5% by a shareholder who already holds more than 30% of the voting shares without having the majority of voting rights.A period of 25–40 days applies to other offers. Consob may extend the offer period up to a maximum of 55 days.
  - 6) Announcement of the result of the offer: settlement.
  - 7) 3-month sell-out period.

## 6.

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

- Mandatory offer: The (minimum) price must be no 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 may not be lower than the weighted average market price in the previous 12 months. Exceptions are regulated by Consob.
- If the bidder directly or indirectly acquires (including future acquisitions through forward contracts) target shares for a higher price than the offer price during the period between the date of the notice to Consob and the date of payment of the offer price or the right to acquire them at a later date, the offer price must be increased to such higher price.

## 7.

May the bidder modify the offer price?

- The bidder may the offer price. 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 five days before the end of the offer period.
- A reduction in 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 have, during the 12 months before exceeding of the threshold, been paid proportionally in such securities, as 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 as an alternative at least.

## 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'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 that the potential bidder disclose its 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, in the normal exercise of their employment, profession or duties, disclose to a third party who is not subject to a confidentiality requirement 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), then said person 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 a 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 to do so by a resolution of the shareholders' meeting)
  - **breakthrough rule** (in general, the rule makes provisions limiting the transfer of securities and voting rights which have been implemented 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 Members 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 the occurrence of which 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)?

- If the bidder directly or indirectly acquires (including future acquisitions through forward contracts) target shares for a higher price than the offer price during the period between the date of the notice to Consob and the date of payment of the offer price, the offer price must be increased to such higher price.
- If competing offers have been made, the bidder may not acquire, until the end of the offer period, 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 communicating its intention to launch 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 offer document 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 6,845 plus, if the exchange value of the offer exceeds EUR 13m an amount equal to 0.05115% of the exchange value exceeding EUR 13m. The maximum amount of the fees for any takeover bid is EUR 3m.
- 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, and (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.



# Luxembourg

## 1.

What transactions/actions generally trigger a mandatory offer?

- In Luxembourg, takeover bids are regulated by the Luxembourg law related to takeover bids dated 19 May 2006 (Luxembourg Takeover Law), which implements the Takeover Bids Directive 2004/25/EC (the Takeover Directive).
- The Luxembourg Takeover Law has determined a shareholding conferring at least 33.33% of the voting rights to be taken into account as granting control over Luxembourg companies. All securities (other than those that confer a right to vote in certain specific cases) are to be considered for the calculation of the said percentage.

## 2.

What are the principal exemptions from the mandatory offer requirement?

- The existence of a voluntary takeover bid in which control has been acquired by all of the security holders for all of their holdings.

## 3.

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

- “Persons acting in concert” are defined in the Luxembourg Takeover Law as natural or legal person who cooperate with the bidder or the target on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the target company or at frustrating the successful outcome of a bid.
- According to Luxembourg Takeover Law, a person is required to make a bid as a mean of protecting the minority shareholders of a company. If a natural or legal person, as a result of his/her own acquisition, or the acquisition by persons acting in concert with him/her, obtains securities in a company which, added to any of his/her existing holdings in those securities and the holding of those securities by persons acting in concert with him/her, directly or indirectly give him/her control of that company.

## 4.

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

- No consequences of creeping-in are provided by in the Luxembourg Takeover Law.

## 5.

How long does it take to complete a mandatory offer?

- In general, the time period for completing the takeover bid should not exceed eight (8) months, as from the decision of the bidder to make a bid.
- Principal steps:
  - The decision to make a takeover bid must, immediately and without delay, be made public by the bidder. The Luxembourg *Commission de Surveillance du Secteur Financier* (the CSSF) must, however, be informed before said decision is made available to the public.
  - Ten (10) working days are then offered to the bidder to submit an offer to the CSSF, the CSSF having itself ten (10) working days to demand additional elements and, once the file is complete, thirty (30) working days to approve the offer documentation.
  - The acceptance period conferred to the target company is two (2) to ten (10) weeks after the offer documentation’s publication. The acceptance period may be extended (subject to the condition that the bidder gives at least a two (2) weeks’ notice of its intention to close the bid) but may not exceed six (6) months – the principle is that the target company must not be hindered in the conduct of its affairs by a takeover bid for its securities for more time than is reasonable.
  - However, a derogation can be given by the CSSF from the above mentioned six-month period so that the target company can call a general meeting of shareholders in relation to the takeover bid.
  - If a competing takeover bid exists, the acceptance period for the initial bid shall be extended and only expire when the acceptance period for the competing bid ends.
  - Announcement of the result of the offer; settlement of the offer price.
  - The accurate timeline should be reviewed in case a squeeze-out is carried out after the offer, or in the event of a litigation process by minority shareholders.

## 6.

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

- The mandatory offer must be submitted at an equitable price.
- The definition of the equitable price is foreseen in the Luxembourg Takeover Law as the highest price paid for the same securities by the bidder or by persons acting in concert with it, over a period of twelve (12) months prior to the takeover bid.
- In the event that, further to the publication of the offer documentation and prior to the term of the acceptance period, the bidder, or any persons acting in concert with it, acquires securities at a higher price than the one of the mandatory offer, the bidder must then increase the offer price to a price at least equal to the highest price paid for the securities.
- Nevertheless, the CSSF can amend the price under limited conditions:
  - if the highest price has been determined by agreement between purchaser and seller;
  - if the securities’ market price has been manipulated;

- if the market prices in general, or certain market prices specifically, have been impacted by extraordinary circumstances ; and
  - in order to rescue a company in financial distress.
- A Grand-Ducal Regulation can provide for additional events which may cause disturbances in the market which may in turn impact the determination of the price.

## 7.

May the bidder modify the offer price?

- The bid price may be increased but shall benefit the holders of the securities who accepted the bid prior to the said increase. The holders of securities shall not be bound by any acceptances of the bid made before the publication of the offer documentation.

## 8.

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

- As soon as the CSSF is informed of the offer, the conditions of the said offer shall not be amended, unless the amendment benefits the holders of the target's securities.
- If any change in the conditions has occurred, the offer cannot be changed again until a reasonable time has passed after publication of the said amendments.

## 9.

Is the bidder entitled to withdraw the offer?

- Once the documentation for the offer has been published, it is only possible to withdraw the bid under the following circumstances:
- if a competing bid exists;
  - if the bidder has not received the required administrative authorisation for the acquisition of the securities connected to the bid (for example, from the authorities in charge of free competition);
  - if a requirement of the bid is not met, regardless of the bidder's offer; and
  - if extraordinary conditions exist independent of the bidder's willingness that do not permit the realisation of the bid. In such case, the CSSF may give a reasoned authorisation for the revocation of the bid.
- In the event of said exceptional events, the CSSF shall be notified of the bid's revocation, and the CSSF must make it public at the bidder's costs.
- There is a possibility for the security holders to revoke their acceptance of a bid if one of the conditions of the Luxembourg Takeover Law is not fulfilled by the bidder or someone acting in concert with it. The related withdrawal shall be notified to the CSSF and, as from the said notification, the CSSF must in turn make it public.

## 10.

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

- The bidder can offer cash, securities or a combination of both of them as consideration.
- Nevertheless, and if the securities offered are not liquid securities admitted to trading on a regulated market, the offer shall comprise a cash alternative. The liquidity of the bidder's securities is deemed sufficient if (i) at least twenty five percent (25%) of the bidder's subscribed capital, represented by the class of securities involved, is distributed to the public, or if (ii) an important number of securities of a same class and their allotment in the public allow a proper functioning of the market with a lesser percentage.

## 11.

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

- A takeover bid shall be made available to the public by the bidder immediately after its decision, taking into account the fact that the CSSF shall be advised of the bid prior to the decision being made public.

## 12.

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

- In case of a recommended bid, due diligence investigations are not subject to Luxembourg Takeover Law. Nonetheless, and at the time of the pre-bid process, a due diligence investigation in relation to the target's management will generally be completed by the bidder in order to determine as closely as possible the target value and to determine the potential risk. All disclosures by the target's management of inside information will be subject to the Luxembourg market abuse laws.
- If a hostile bid exists, due diligence is in general limited to public information, as hostile bids are not supported by the target's management. Nevertheless, the potential bidder should be given sufficient information, as the rules intended to ensure the transparency of the market have now been improved.

## 13.

What deal protection measures may a bidder implement?

- Obtaining break fees from the target or/and its controlling shareholders (to be justified as being in their corporate interest. They may also trigger liability for the board of directors for misuse of corporate assets).

## 14.

What provisions exist relating to board neutrality?

- A document setting out the opinion of the target's board of directors on the takeover bid and the reasons supporting the said opinion shall be drafted and made available to the public. It shall include board of directors' views on the consequences of the bid's completion (e.g. especially on employment and on the bidder's strategic plans for the target).

In the event that a Luxembourg company has chosen the option for the management passivity rule, the company board shall get prior authorisation from the shareholders' general meeting before implementing any actions likely to frustrate the offer, except actions involving seeking other offers. The company shall especially get prior authorisation from the shareholders' general meeting before proceeding to the issuance of shares.

## 15.

What conditions are permissible for mandatory offers?

- Pre-conditions are provided by Luxembourg Takeover Law in the event of mandatory offers.
- Minimum acceptance conditions and competition clearance 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.

## 17.

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

- The bidder shall declare the bid only after having ensured that it can meet, in full, any cash consideration (if foreseen), and after having taken all reasonable actions to secure the realisation of any other kind of consideration. The offer document shall specify the means for the payment of the consideration.

## 18.

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

- In general, assistance will be provided by financial advisers, legal counsels, public consultants and listing agents on the request of the target and the bidder.

## 19.

What are the regulatory fees for takeover proceedings?

- Running fees payable by the bidder to the CSSF are foreseen.

## 20.

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

- The takeover bid should be considered null and void in the event that the general principles of the Luxembourg Takeover Law on bids are not fulfilled or in the event that the CSSF considers a condition precedent in relation to the bid to not have been met.
- If the Luxembourg Takeover Law is breached, the CSSF shall impose a fine ranging from EUR 125 to EUR 12,500.
- Criminal sanctions consisting of a jail term of eight (8) days to five (5) years and a fine ranging from EUR 251 to EUR 125,000 may be incurred if the CSSF is not provided with information concerning the bid or if the CSSF's additional information request is not complied with.

## 21.

What shareholding is generally required for a squeeze-out?

- The majority shareholder, acting in concert or alone, must hold at least 95% of the capital carrying voting rights and 95% of the voting rights. The related thresholds are calculated as of the date when the squeeze-out is requested by the shareholder (and/or the minority shareholders request the sell-out mechanism).
- The CSSF shall be informed beforehand by the majority shareholder of its intention to initiate a squeeze-out.
- The definition of the majority shareholder (the Majority Shareholder) is provided by the Luxembourg law dated 21 July 2012 on the mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public (the Luxembourg Squeeze-Out and Sell-Out Law). The Majority Shareholder is defined as any natural or legal person holding, alone or with other persons acting in concert, indirectly or directly, securities representing not less than 95% of the capital carrying voting rights and 95% of the voting rights of the company.

## 22.

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

- Further to a successful bid, a simplified squeeze-out could be eventually possible if: a) the bidder has mentioned in the offer documentation that it has reserved such a right; b) at the closing 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 relation to the bid; and d) a squeeze-out resolution is taken within three (3) months following the end of the offer period.

## 23.

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

- The exercise of a squeeze-out shall be made by the bidder prior to the term of three (3) months from the deadline which has been fixed for the acceptance of the bid; and
- A squeeze-out shall be realised at a fair price.  
The above-mentioned other legal requirements shall not be considered as exhaustive.

## 24.

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

- In certain cases, a Majority Shareholder can be required to acquire the securities of a minority shareholder at an equitable price pursuant to the Luxembourg Squeeze-Out and Sell-Out Law, notably at the following conditions:
  - The last mandatory sell-out required by a minority shareholder occurred at least two (2) years ago.
  - The publication of the acquisition of securities by the Majority Shareholder occurred within the last three (3) months.

## 25.

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

- A notification from the minority shareholder indicating that the latter will exercise its sell-out rights shall be sent to: (i) the Majority Shareholder, (ii) the company and (iii) the CSSF.  
The Majority Shareholder shall appoint an independent expert in order to fix a fair price (application of identical rules for both sell-out and squeeze-out). Payment of fees to the CSSF may be entailed.



# The Netherlands

## 1.

What transactions/actions generally trigger a mandatory offer?

- Direct or indirect control through acquisition of 30% or more of the voting rights of the target.
- Acting in concert by parties with an aggregate shareholding of 30% or more of the voting rights of the target.

## 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 a scheme for collective investment in transferable securities or an investment company that allows participants to request direct or indirect redemption or repayment of their shares or units.
  - A controlling interest is obtained as a result of an unconditional full (voluntary) public bid if the acquirer can exercise more than 50% of the voting rights in the general meeting as a result of the unconditional full 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 or a registered partnership to a person with a controlling interest.

- The general meeting of the target consents before the bidder obtains control, but no longer than three months before, that no mandatory offer should be made. The consent must be carried by at least 90% of the votes cast by shareholders other than the acquirer of the controlling interest and persons with whom the acquirer is acting in concert.
- The general meeting of the target consents in the manner stated above to each subsequent acquisition of shares in the target by the same acquirer or one of the persons with whom it is acting in concert.
- As a result of securities having been underwritten when they are offered, on a firm commitment basis, in the pursuit of a profession or business, if the acquirer exercises no voting rights on these securities. This exemption is applicable for the period of a year after the time that the controlling interest has been obtained.
- As a result of an unconditional agreement between a party entitled to securities and a bidder that complies with certain conditions.
- A party that acquires a controlling interest simultaneously with the acquisition of the same amount of voting rights in the target by group companies, as long as one of the group companies makes the public bid.
- Parties that acquire a controlling interest by means of joining an alliance of parties acting in concert that, in any event, held continuous control over a target as of 28 October 2007, provided that these parties cannot unilaterally exercise a majority of the voting rights held by the alliance and do not have the intention to do so by means of an extension of their interest.
- The control threshold is only exceeded temporarily during the so-called grace period, i.e. ultimately thirty days but may be extended by the Enterprise Chamber at the Amsterdam Court of Appeals ("Ondernemingskamer" – the "Enterprise Chamber") by a maximum of sixty days on the request of the acquirer, unless the controlling interest has been lost as a result of a transfer of an interest to a natural person, legal person or company that may make use of an exemption, or the acquirer has exercised its voting rights within this period.
- The Enterprise Chamber may, on request, decide that the person that has obtained a controlling interest shall not be obliged to make a mandatory offer if the financial situation of the target and the enterprise connected therewith opposes it.
- The Enterprise Chamber may, on request give an order to the person who has obtained a controlling interest to dispose of this interest within a period determined by the Enterprise Chamber, if antitrust complications apply.

### 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?

- The acquirer must comply with disclosure and notification obligations.
- In the event that an acquirer makes information public on the target, wherefrom it may be derived that the acquirer intends to make a public offer, the target could request that the AFM apply the Dutch put up or shut up rule. On the request of the target, the AFM may require the acquirer to issue a press release within six weeks stating whether or not it will make a public offer and to issue a press release stating that it is required to do so without delay.
- A party that acquires a controlling interest in a target shall issue a press release without delay.
- Direct or indirect control by a party alone or together with persons with whom it is acting in concert through acquisition of more than 30% of the voting rights of the target, pursuant to which it is obliged to make a mandatory offer. The obligation to make a mandatory offer lapses if the acquirer disposes of its controlling interest within 30 days of acquiring it. If the acquirer disposes of its controlling interest, it shall issue a press release without delay. The acquirer shall also issue a press release in the event that a request is filed with the Enterprise Chamber asking that the thirty-day period be extended to sixty days.
- In the event that an acquirer is not allowed to make a public offer within a period of six or nine months as a result of an applicable Dutch standstill provision, it is prohibited for the acquirer and persons with whom it is acting in concert to acquire a controlling interest in the target. If a controlling interest is obtained in breach of a standstill provision, the Enterprise Chamber may, on the request of the target, give an order to the acquirer to dispose of this interest within a period to be determined by the Enterprise Chamber.
- Several exemptions from the mandatory offer requirement apply, as stated under 2 above.

## 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) A party that acquires a controlling interest in a target shall issue a press release without delay.
  - 2) Announcement of the mandatory offer ultimately after the grace period of thirty days. This means that the announcement of the mandatory offer may also be included in the public announcement regarding the acquisition of the controlling interest. 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 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. Finally, and at the announcement of the mandatory offer, the bidder shall make a public announcement on the manner of the calculation and the height of the expected fair price.
  - 3) The bidder must procure and issue a press release stating 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.

- 4) 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. The time period until submission to the AFM may not exceed 12 weeks from the public announcement of the mandatory offer. The AFM must approve the offer document.
- 5) 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.
- 6) Offer period. The offer period for a mandatory offer is no less than eight weeks and no more than 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.
- 7) The board's position statement. Provided that the target has its seat in the Netherlands or that the target has its seat outside of the Netherlands and the AFM may approve the offer document thereof no later than ten business days prior to the end of the offer period, the target must make a document available to its shareholders setting out the position of its boards with respect to the public bid.
- 8) 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 with the bidder – 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.
- If, after the announcement of the mandatory bid and prior to the end of the offer period, the bidder or the persons with whom it is acting in concert acquires securities for a higher price than the fair price, the bidder shall increase the price up to at least the highest price that has been paid for the acquired securities.
- 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 increase the offer price during the offer period without limitation. If the bidder – or persons acting in concert with the bidder – 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. The bidder may also request that the Enterprise Chamber determine the fair 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). 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?

- Mandatory offers may not be withdrawn. Voluntary offers may not be withdrawn after publication of the offer document. 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 voluntary offer lapse.

## 10.

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

- The "fair price" may be paid in securities, in cash, or in a combination thereof.
- A share/paper offer is only permissible if the offered securities are liquid and have been admitted to trading on a regulated market.
- The "fair price" must in any event also be stated in cash if the bidder alone or together with persons with whom it is acting in concert 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?

- The acquisition of a controlling interest by a person in the target.
- In the event that inside information must be made public without delay, e.g. if negotiations with the target cannot be kept confidential any longer.
- In the event of a voluntary offer, 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.
- A voluntary offer is announced, if a bidder, without having reached "conditional agreement", has made precise information public (e.g. the intended price or exchange ratio, or a precisely described intended time scheme with respect to the process of the intended public offer) regarding the content of the intended public offer, unless the target issues a public announcement without delay stating that it has entered into negotiations with the bidder.
- At the request of the target, a bidder that has made information public which results in the impression that it intends to prepare a public offer may be required by the AFM to: (a) issue a public announcement within six weeks of having been informed by the AFM of this requirement, wherein it announces that this is a public offer and not a mandatory offer, or that it does not intend to make a public offer, and (b) issue a public announcement without delay after the AFM has informed the bidder of the requirement to do so.

## 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 press release must be issued without delay and 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. This may result in acquiring a controlling interest being acquired. An exemption from the obligation to make a mandatory offer is applicable if a controlling interest has been obtained as a result of an unconditional agreement between a party entitled to securities and a bidder that complies with certain conditions.

## 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 bidder has made an offer for its shares.

## 15.

What conditions are permissible for mandatory offers?

- Mandatory offers may not be subject to any conditions set by the bidder.
- 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 acquire target shares outside the mandatory offer, provided that the fair price is increased up to the highest price paid between the announcement of the mandatory offer and the offer period. The offer price with respect to a voluntary offer must also be increased to the price paid in transactions outside of the offer, except for regular transactions on the regulated market or a comparable system in a non-EU member state.
- 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.  
As a matter of market practice, the certain fund announcement is usually included in the first public announcement.

## 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 25,000 for approval of the offer document.
  - EUR 4,500 after the bidder has announced a public offer.
  - A fee of 0.0075% 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 or during the post-offer period, with a maximum cap of EUR 650,000. This fee is charged after the bidder announced whether the public offer will be declared unconditional.
  - EUR 5,500 for granting a partial or whole dispensation on certain obligations with respect to public offerings, e.g. the prohibition to make a public offer without an already approved offer document.

## 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?

- Dutch law provides for a general squeeze-out procedure and a specific squeeze-out procedure following a public offer. For the specific squeeze-out procedure 95% of the shares and voting rights of the target shall be required. The general squeeze-out procedure requires 95% or more of the shares of the target.

## 22.

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

- The bidder that has acquired 95% of the shares and voting rights of the target as a result of a public offer may start a specific squeeze-out procedure against the remaining shareholders. These 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 is in cash.
- 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 as a result of a public offer, 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

## 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; and
  - 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; and
  - 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; and
  - 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 five 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); and
  - 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"; and
  - 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; and
  - 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; and
  - 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 no less than 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); and
  - 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 (as specified in NDS Table of Fees).

## 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 1m (approximately EUR 250,000); and
- 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;
- intermediation of a broker is required;
- notification to the Financial Supervision Authority and the Warsaw Stock Exchange is required;
- establishment of collateral for no less than 100 % of the value of the squeezed-out shares;
- 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 period for the majority shareholder to respond to a demand by a minority shareholder that it sell its shares is 30 days; and
  - 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.



# Portugal

## 1.

What transactions/actions generally trigger a mandatory offer?

- Exceeding one third or half of the voting rights in a public company. This will include direct or indirect participations or acting in concert as detailed under point 3. below.

## 2.

What are the principal exemptions from the mandatory offer requirement?

- This obligation may be waived if more than one third of the voting rights of a public company are acquired and when the acquiring entity is able to provide evidence to the Portuguese Security Markets Commission ("CMVM") that it does not control the target company or is not in a group relation with such company. If the acquiring entity is able to provide such evidence it must:
  - (i) communicate to the CMVM any change in the percentage of voting rights resulting in an increase of more than one percent in relation to the previously communicated situation; and
  - (ii) launch a mandatory offer as soon as it acquires a position allowing it to exercise a dominant influence over the target company.
- The CMVM may exempt an entity from the obligation to launch a mandatory offer if the relevant thresholds have been exceeded due to:
  - (i) the acquisition of securities by a take-over bid launched: (a) for all the shares or securities granting the right to subscribe to and acquire (without any restriction relating to the quantity or maximum percentage of securities to be acquired) the target company, and (b) in compliance with the requirements set out in the Portuguese Securities Code ("PSC") regarding consideration for mandatory offers;
  - (ii) The execution of a financial recovery plan within the scope of one of the recovery plans established by law, including the application of resolution measures and the exercise of resolution powers or reduction or conversion of equity instruments to credit institutions or financial companies, in accordance with the law; and
  - (iii) The merger of companies, if the resolution of the general shareholders' meeting of the target company expressly specifies that the operation would result in the duty to launch a takeover bid.
- The obligation to launch a mandatory offer may be suspended if the person under such obligation, immediately upon the occurrence of the events giving rise to such obligation, undertakes to cause such events to cease within the following 120 days.

### 3.

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

- One or more persons having entered into any agreement with the shareholders constitutes an instrument of concerted exercise of influence over the relevant company. There is, for this purpose, a presumption in the PSC (which can be rebutted) that all agreements involving the transfer of shares in the target company are instruments of concerted exercise of influence over the relevant company. In case the shareholder is deemed as acting in concert with another person the voting rights held by such person shall be attributed to the shareholder for purposes of assessment of a qualified holding, which would be notably relevant at two levels: (i) for purposes of disclosure duties and (ii) for purposes of the launch of a mandatory offer.

### 4.

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

- Where the shareholder has been able to rebut towards the CMVM the control presumption arising from the holding of one third of the voting rights of the target company (please refer to section 2 above), such shareholder shall be obliged to disclose to the CMVM any acquisition of additional voting rights exceeding in more than 1% the position previously disclosed and shall be further obliged to trigger a mandatory offer upon attaining a position which allows the shareholder to exercise an influent dominance over the target company.
- General exemptions from the offer requirement apply.

### 5.

How long does it take to complete a mandatory offer?

- Principal stages of the offer process include:
  - (i) Disclosure of preliminary announcement and appointment of the financial intermediary immediately after the occurrence of the fact which triggers the obligation to launch a mandatory offer.
  - (ii) Submission to CMVM of the application for registration of the mandatory offer 20 days after the publication of the preliminary announcement.
  - (iii) Issuing of an opinion on the mandatory offer by the target company’s board of directors eight days after receipt of draft prospectus and draft offer announcement.
  - (iv) Decision by CMVM eight days after receiving: (a) the application for registration of the mandatory offer, or (b) any additional information requested by CMVM. CMVM may suspend this deadline if, for example, the offer is conditional on obtaining regulatory or competition approvals.
  - (v) Term for mandatory offer after registration of offer by CMVM: between two to 10 weeks. The CMVM may in certain conditions extend this period.

## 6.

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

- Mandatory offers must be made at an “equitable consideration”. The consideration may consist of cash, securities already issued or to be issued, or a mix of cash and securities.
- An “equitable consideration” must be the highest of the following amounts:
  - (i) The highest price paid by the bidder or by any individuals to whom voting rights are attributed (as explained in 3 above) for the acquisition of securities of the same class in the six months immediately prior to the date of publication of the preliminary announcement of the offer; or
  - (ii) the average price of these securities as verified in a regulated market during the same period.
- If the consideration cannot be determined by reference to the criteria described above or if the CMVM considers that the consideration proposed by the bidder is not duly justified or equitable, is insufficient or excessive, a minimum consideration will be determined, at the bidder's expense, by an independent auditor appointed by the CMVM.
- A consideration proposed by the bidder shall be presumed to be “non-equitable” in the following circumstances:
  - (iii) if the highest price has been set by means of an agreement between the purchaser and the seller through private negotiation;
  - (iv) if the securities in question have low liquidity with reference to the regulated market on which they are admitted to trading; and
  - (v) if such consideration was determined on the basis of the market price of the securities in question and this market price or the regulated market on which the securities are admitted to trading has been affected by extraordinary events.

## 7.

May the bidder modify the offer price?

- The bidder may only increase the offer price. A reviewed offer cannot contain conditions making it less advantageous and its consideration must be at least 2% above the preceding offer as to its amount.

## 8.

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

- The bidder may, within a reasonable period and subject to the CMVM's authorisation, modify or withdraw the offer if there is an increase in the risks of the offer due to an unforeseen and substantial change in the circumstances which were the grounds for the assumptions that the offer could be launched, provided that such assumptions were disclosed to the addressees of the offer.

## 9.

Is the bidder entitled to withdraw the offer?

- A public offer may only be withdrawn in accordance with paragraph 8. above.

## 10.

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

- The consideration of a mandatory offer may consist of cash, securities already issued or to be issued, or a mix of cash and securities. Please see paragraph 6. above.

## 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 or the occurrence of events triggering the obligation to launch a mandatory offer.

## 12.

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

- Portuguese law does not have specific provisions on this. However, general provisions of law such as insider dealing provisions will apply.
- Notwithstanding the fact that a specific rule on such a matter does not exist, CMVM has accepted in the past that a voluntary offer is conditional upon the confirmation of relevant information regarding the target company.

## 13.

What deal protection measures may a bidder implement?

- There is no established case law relating to deal protection measures.
- Please refer to information on modifications or withdrawal of offers in 8 and 9 above and the conditions for the offer in 15 below.

## 14.

What provisions exist relating to board neutrality?

- The board of directors of the target company must, within eight days after having received the draft prospectus and the draft offer announcement, issue an opinion on:
  - (i) consideration of the offer;
  - (ii) strategic plans of the offeror for the target company;
  - (iii) impact of the offer on the interests of the target company and in relation to employees, working conditions and places where the company conducts its activity; and
  - (iv) whether directors of the target company who are simultaneously shareholders will accept the offer. Additionally, the board of directors of the target company cannot perform acts that materially affect the net equity of the target company and which may significantly affect the objectives announced by the bidder, apart from the normal day to day management of the company, from the moment they become aware of the decision to launch an offer (over more than one third of securities of the same class) until assessment of the offer results or earlier termination of the process.

## 15.

What conditions are permissible for mandatory offers?

- There are no legal provisions specifying which conditions are permitted for mandatory offers.
- In general, an offer may only be subject to conditions which correspond to the bidder's legitimate interest and do not affect the normal functioning of the market. CMVM usually takes a very restrictive approach to this in relation to mandatory offers.
- An offer may not be subject to conditions whose verification depends on the bidder.

## 16.

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

- As from the publication of the preliminary announcement until the assessment of the offer's result, the bidder or any individuals to whom voting rights are attributed according to the provisions for the attribution of voting rights:
  - (i) cannot negotiate outside regulated market securities in the same class as those which are the object of the offer or those which comprise the consideration, except if authorised by the CMVM, with a previous opinion issued by the target company; and
  - (ii) must inform the CMVM daily of the transactions carried out by each of them relating to the securities issued by the target company or in the same class as those which comprise the consideration.
- If any of the acquisitions referred to above occur:
  - (i) in the context of voluntary offers, the CMVM may require a review of the consideration if, as a result of such acquisitions, the consideration of the offer is not "equitable"; and
  - (ii) in the context of mandatory offers, the bidder must increase the consideration to a price which is not lower than the highest price paid for the securities acquired.

## 17.

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

- If the consideration consists of cash, the bidder must deposit the total amount with a financial institution or present an appropriate bank guarantee before registering the offer with the CMVM.
- If the consideration consists of securities, these should have appropriate liquidity and be easy to evaluate. The securities offered as consideration which have already been issued should be registered or deposited to the order of the bidder in a centralised system or with a financial intermediary and blocked in the relevant account.

## 18.

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

- A financial intermediary must be appointed to provide assistance throughout the process (as from the disclosure of the preliminary announcement) and to receive the declarations of acceptance of the selling shareholders.
- When the consideration cannot be calculated by reference to the criteria described in applicable provisions of the PCS or if the CMVM considers that the consideration, in cash or securities, proposed by the bidder is not duly justified or equitable, or is insufficient or excessive, then a minimum consideration will be calculated, at the bidder's expense, by an independent auditor appointed by the CMVM.

## 19.

What are the regulatory fees for takeover proceedings?

- A EUR 2,500 fee will apply when an application to register a takeover bid is submitted. If the registration of the offer is effected, the fee above will be increased by an amount between: a) 0.05% of the value of the transaction (subject to a limit of EUR 75,000) and 0.1% of the value of the transaction (subject to a limit of EUR 100,000), depending on the facts that triggered the offer.
- The CMVM may exempt the registration of the offer from fee payment as set out above when the applicant provides evidence that the transaction is aimed at promoting the economic and financial recovery of the relevant issuer.
- If applicable, other fees (such as fees payable to other regulators) may be due.

## 20.

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

- Failure to make a mandatory offer results in the immediate suspension of the voting rights and dividends attached to shares that:
  - (i) exceed the limit over which the launch of an offer would be mandatory; and
  - (ii) have been acquired by the exercise of rights inherent in the shares referred to in (i) above or in other securities granting the right to their subscription or acquisition.
- The suspension is in force for five years and ceases:
  - (i) totally with the publication of a preliminary announcement of a mandatory offer with a consideration not lower than the one which would be applicable if the obligation had been complied with in due time; and
  - (ii) in relation to each share described above at the time of its sale to third parties who are not involved in any of the situations triggering attribution of voting rights as described in 3 above.
- Resolutions by the shareholders which could not have been approved without the suspended voting rights are void.
- The suspended dividends revert to the company.
- Failure to make a mandatory offer is considered a very serious offence under the PSC, being subject to a fine ranging from EUR 25,000 up to 5,000,000.00.
- The transgressor is also liable for the damages caused to the holders of securities in relation to which a mandatory offer should have been launched.

## 21.

What shareholding is generally required for a squeeze-out?

- A squeeze-out in companies with capital open to the public is governed by the PSC. Please see 22 below.

## 22.

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

- A squeeze-out after a successful offer is possible if the bidder directly (or in accordance with provisions dealing with attribution of voting rights described in 3 above) reaches or exceeds 90% of the voting rights corresponding to the share capital of the target company and 90% of the voting rights covered by the offer.

## 23.

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

- The purchase price of a squeeze-out following a successful public offer must be an “equitable price” in cash which is determined in the manner as set out in 6 above. The controlling shareholder must take the decision to proceed with a squeeze-out within three months after conclusion of the public offer and, if such decision is taken, immediately publish a preliminary announcement and submit the same to the CMVM for registration.
- The publication of the preliminary announcement binds the controlling shareholder to deposit the consideration with a credit institution to the order of the holders of the remaining shares.
- The acquisition becomes effective upon publication by the interested party of the registration of the offer with the CMVM.
- The acquisition will immediately imply the loss of the publicly traded status of the company and exclusion from trading on a regulated market of the shares in the company and securities carrying rights to such shares.

## 24.

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

- Shareholders holding the remaining shares (“Minority Shareholders”) may, in the three-month period following completion of a public offer (where the bidder, directly or in accordance with provisions dealing with attribution of voting rights described in 3 above, reaches or exceeds 90% of the voting rights corresponding to the share capital of the target company and 90% of the voting rights covered by the offer) exercise the right to sell-out.
- Minority Shareholders must send a written invitation to the controlling shareholder to make a proposal to acquire their shares within eight days.
- In the absence of the proposal set out above or if the same is not considered satisfactory, then Minority Shareholders may take the decision to proceed with a compulsory sale by submitting a statement before the CMVM with:
  - (i) a document evidencing the deposit or the blockage of shares to be sold; and
  - (ii) indication of the consideration calculated in the same terms as are applicable to a squeeze-out.
- Once the sale requirements have been verified by the CMVM, the sale is effective from the date of notification by CMVM to the controlling shareholder.
- The certificate of such notification constitutes a writ of execution.

## 25.

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

- The Portuguese law does not currently set out any further requirements.



# Romania

## 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; and
  - 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 three 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; and 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; and
  - a company with its pension funds and with the manager of these pension funds.
- 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); and
  - 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?

- Completing a mandatory offer would take at least seven weeks after submission of the offer documents to the Financial Supervisory Authority (“FSA”). Such term could be materially extended if a) the offer period exceeds the minimum period of 15 business days (see details below) or b) FSA 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 FSA within two months after exceeding the 33% threshold.
  - 3) Approval by FSA of the offer prospectus, within ten business days after its submission (unless additional documentation or clarifications are requested by FSA).
  - 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
- 8) to FSA 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 FSA 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 FSA;
  - the net asset value per share of the target according to its latest financial statements; and
  - 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 FSA 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 changes to 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 and provided that it refers to the same quantity of securities or it envisages reaching the same share capital threshold. If a competing bid is made, FSA 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, FSA 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 FSA;
  - 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 FSA 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 FSA 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 FSA.

## 17.

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

- The offer documents that must be submitted to FSA 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 valuers 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, FSA considers that these transactions may influence the accuracy of the price.

## 19.

What are the regulatory fees for takeover proceedings?

- The bidder must pay FSA a fee of 1% of the total 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 an administrative offence. 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 110) and RON 50,000 (approximately EUR 11,000) for natural persons.

- Generally, FSA 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 administrative offence, although they could have done so and were obliged to prevent it. Such natural persons may be held liable for damages caused by the administrative offence.

## 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);
  - FSA 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; and
  - 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:
  - FSA 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.



# Russia

## 1.

What transactions/actions generally trigger a mandatory offer?

- Acquisition of more than 30% of the voting shares of a public company or a company that was an open joint stock company (even if not listed) as of 1 September 2014;
- Acting in concert by affiliated parties acquiring an aggregate shareholding of more than 30% of voting shares in a public company.
- Creeping-in.

## 2.

What are the principal exemptions from the mandatory offer requirement?

- Acquisition of shares during formation or reorganisation of a public company or during conversion of a non-profit private pension fund into a public company.
- Acquisition of shares on the basis of an earlier mandatory offer or a voluntary offer that met most of the requirements applicable to the mandatory offer.
- Transfer of shares between affiliated persons, or as a result of the division of joint property between spouses or of jointly inherited property.
- Redemption of shares.
- Acquisition resulting from an exercise by a shareholder of its pre-emptive right to the acquisition of additionally issued shares.
- Acquisition of shares for a period of up to six months by a placement agent or a similar securities market professional identified as such in the prospectus.
- The bidder has notified shareholders (via the target company) about their entitlement to be bought out in cases where the bidder has acquired more than 95% of voting shares in the target.
- The bidder has submitted a squeeze-out request to the target company.
- Transfer of shares by the Russian State to a state corporation as part of its contribution to the latter's assets.
- Contribution of shares by the Russian state or municipality to the equity of a company that is or becomes controlled by the state or such municipality as a result of such contribution.
- Contribution of shares into new equity privately placed by a public company on a special list of "strategic enterprises" approved by the Russian President.
- Share transfers between federal, regional and municipal bodies.
- 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 and acquisitions by the Bank of Russia under repo contracts.

## 3.

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

- “Acting in concert” can be defined as any acquisition of shares by any 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?

- An acquisition of shares resulting in the acquirer crossing the 50% and 75% thresholds of voting stake in the target triggers the requirement to launch a regular mandatory offer.

## 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 of the offer will normally take about four months. Statutory conditions (especially merger control proceedings) may further delay the process.

## 6.

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

- The minimum per share price is the higher of:
  - (i) for traded shares, the average price of the shares in the target quoted on the stock market during the six-month period preceding the date of filing the offer documents with the Bank of Russia;
  - or (ii) for non-traded shares or shares traded for less than six months as of the date of filing the offer documents with the Bank of Russia, a market value determined by an appraiser.
  - The highest amount of the consideration paid or committed to be paid by the bidder or any of its affiliate for shares in the target within a six-month period immediately preceding the date of submission of the offer documents to the target.

## 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?

- In addition, the bidder may only shorten the time period for settlement of the offer price. The bidder must also amend certain technical details of the offer, such as details of the bidder’s account for share transfers or details for notices, as and when they change.

## 9.

Is the bidder entitled to withdraw the offer?

- The bidder is generally not entitled to withdraw a mandatory offer. If the regulator discovers that the offer is non-compliant and orders rectification, the bidder must replace the original offer with a compliant one.

## 10.

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

- A non-cash offer is not permissible. However, the offerees may settle in other securities as an alternative option.

## 11.

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

- The bidder acquiring the traded shares must disclose the fact of serving and the terms and conditions of the voluntary or mandatory offer in accordance with the Russian securities law.
- The law provides a separate regime for a bidder intending to acquire more than 30% of voting shares in a public company to launch a "voluntary" offer on terms that are generally more flexible than those for the mandatory offer. If the bidder acquires more than 30% of voting shares through a voluntary offer, it must separately launch a mandatory offer, unless the voluntary offer was compliant with the requirements applicable to a mandatory offer.
- Following receipt of the offer, the target is subject to certain public disclosure requirements under the applicable securities laws.

## 12.

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

- The law does not generally restrict the bidder's ability to carry out a due diligence on the target. The target's ability to honour a due diligence query from a bidder is subject to the general rules on commercial and state secrets, confidentiality and insider trading. As such, the target's management is under certain general obligations to keep the relevant "sensitive" information confidential.

## 13.

What deal protection measures may a bidder implement?

- The bidder may not implement any deal protection measures by itself. However, the law sets out a number of them by default, e.g.:
  - a shareholder that has accepted the offer may not dispose of, or create, any encumbrance on its shares. This restriction must be reflected in the shareholders register and remains in force until either the offer has expired or acceptance by the shareholder is revoked, depending on which of these two takes place earliest;
  - upon receipt by the target of a mandatory offer certain matters normally within the scope of the board of directors' authority become reserved for the general meeting of shareholders; and
  - if the shares (part of the shares) are not transferred to the bidder within the period specified in the offer, the bidder may then repudiate its obligation to acquire such shares (part of the shares) with no liability.

## 14.

What provisions exist relating to board neutrality?

- Upon receipt by the target of the mandatory offer, the target's board (if provided for in the target's articles and elected by shareholders) 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, etc.

## 15.

What conditions are permissible for mandatory offers?

- Mandatory offers may not be conditional. This means that any statutory conditions must be satisfied prior to the launch of the offer and, as a practical matter, prior to the closing of the acquisition triggering the requirement to launch an offer.

## 16.

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

- The bidder may not acquire any shares in the target on terms different from the offer terms within the acceptance period of the mandatory offer.

## 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. Such bank guarantee must be effective within at least six months from the expiry of the settlement period under the mandatory offer.

## 18.

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

- An 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?

- Voting rights in those acquired shares that bring the defaulting acquirers' total shareholding in excess of 30 % are suspended until a mandatory offer is made.
- Administrative fines ranging from EUR 15 to EUR 7,500 may be imposed on the bidder and its CEO.
- Potential damage claims from current and former shareholders in the target.

## 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 voting shares, out of which at least 10% of all voting shares in the target have been acquired through a voluntary or mandatory offer.

## 23.

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

- The squeeze-out request must be first filed with the Bank of Russia.
- The squeeze-out price must be at least the higher of (i) the mandatory offer price, (ii) any price at which the bidder or any of its affiliates has purchased or committed to purchase any shares in the target after the acceptance period under the mandatory offer, (iii) a completed voluntary offer price (if applicable), and (iv) a valuation by an appraiser.
- The squeeze-out price is payable in cash only.
- Settlement of the squeeze-out price must take place not later than 25 days after the date as on which the list of minority shareholders is compiled.
- 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 voluntary or mandatory offer and; a squeeze-out notice which a bidder must make following an acquisition of more than 95% of voting shares in a target, unless it is entitled to make a squeeze-out request.
  - If the bidder is entitled to make a squeeze-out request, the minority shareholders are forced to sell and may only challenge the squeeze-out price.

## 25.

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

- In the event of a squeeze-out notice, the bidder must pay for the shares within 17 days after it has received a sell-out demand from a minority shareholder in response to the squeeze-out notice. In the event of a squeeze-out request, the bidder must deposit cash with a notary before the shares are transferred to the bidder, if the shareholders subject to the squeeze-out are unidentifiable.



# Serbia

## 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 directly or indirectly, independently or acting in concert, acquires (in aggregate) shares in excess of 25% of the total voting rights in the target;
  - b) if a person, after reaching the controlling threshold (under a) above) or after the announcement of the mandatory offer, acquires further shares in situations that were initially exempted from this obligation (point 2. below) and if a person, directly or indirectly, independently or acting in concert, acquires shares and thus increases its participation in the total number of voting shares by more than 10% (additional threshold); and
  - c) if a person, after reaching the controlling threshold (under a) above) or after the announcement of the mandatory offer, acquires further shares in situations that were initially exempted from this obligation (point 2. below), and if a person, directly or indirectly, independently or acting in concert, acquires a share and thus increases its participation in the total number of voting shares by less than 10%, but in total exceeds the threshold of 75% of the total voting shares (final threshold).
- There is no obligation to launch a further mandatory offer for a person that, after the completed mandatory offer, holds at least 75% of the total voting shares.
- 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
  - 1) a public joint stock company incorporated under the laws of the Republic of Serbia ("RS"), with shares traded on the Belgrade Stock Exchange ("Belex"), or a multilateral trading platform (MTP), and
  - 2) a joint stock company incorporated under the laws of RS that has more than 100 shareholders on each last day of the month for three consecutive months, as well as a total share capital to the value of a minimum of EUR 3m.

## 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) and if no change of control occurred as the result of a transfer of shares or a transfer of shares was made 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 or persons with whom RS acts in concert;
  - 11) after the completed mandatory offer procedure shares are acquired by means of transfer between the persons that acted in concert in such procedure;
  - 12) by acquisition of the shares in the target and, through said acquisition, the acquirer holds the same percentage of voting shares in the target as another shareholder of the target that announced the offer, or it holds a lower percentage of voting shares in the target than said shareholder;
  - 13) through capital increase by means of new contributions or from the net assets of the target and the shareholders' meeting of the target passes a resolution approving, by the majority of  $\frac{3}{4}$  of the present non-conflicted votes, such capital increase (acquisition of shares) without the obligation to launch a takeover offer;
  - 14) before the TA became applicable; and
  - 15) if the exception is prescribed by another law.
- The TA does not apply, in accordance with the law regulating privatisation, to trading in securities from the following sectors: from the Shareholders' Fund (or from the shareholders whose shares are offered jointly with the shares of the Shareholders' Fund), from the Republic Fund for Pension and Disability Insurance of Employed Persons or the Republic Development Fund, from the Registry of Shares and Shareholdings (transferred upon the termination of the privatization agreement) or from the RS, an autonomous province or a unit of local self-government.
- The Shareholders' Fund is not subject to a mandatory offer when acquiring shares in accordance with the law regulating the privatisation.
- There are additional exceptions provided by the TA, referring to the shares related to the legal succession of RS from the former Yugoslavia, the shares held and sold by the Serbian Agency for Securing the Deposits, shares of RS or the Agency for Securing the Deposits in the Central Registry, Belex, shares issued by banks or insurance companies for restructuring or similar purposes, or under the instruction of the National Bank of Serbia, etc.

### 3.

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

- It is considered that parties “act in concert” if they cooperate mutually or with the target, based on the agreement, orally/written/tacit, to cooperate for the purpose of acquiring the voting shares or exercising coordinated voting rights or preventing a third party from performing a takeover offer.
- The following parties should be also considered as acting in concert:
  - (i) members of the management bodies of the companies acting in concert;
  - or (ii) members of the management bodies with the respective companies (in which these management bodies are established).
- 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 spouses, 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 lasts, in total, for approximately two to three months (including possible extensions of the offer period).
- Principal stages of the offer process:
  - 1) Action: notification of the intention to launch a mandatory bid for the target addressed by the bidder to the Securities Commission (“SEC”), Belex, Central Registry of the Securities and the target. Timeframe: two business days upon the obligation to make a mandatory offer arising (i.e. when the threshold is exceeded).
  - 2) Action: announcement of the intention to launch a mandatory bid for the target in a daily newspaper with a nationwide circulation. Timeframe: immediately upon the obligation to make a mandatory offer arising (i.e. when the threshold is exceeded).
  - 3) Action: filing of the request for approval of the offer documents with the SEC. Timeframe: within 15 (fifteen) business day of the obligation to launch a mandatory offer arising.
  - 4) Action: SEC approval of the offer. Timeframe: ten business days from the date of filing of the complete request for the approval (in practice, SEC always requires additional documents).
  - 5) Action: announcement of the short form of the offer documents in a daily newspaper with a nationwide circulation (and optionally on the web site of the target) and delivery of it to the SEC, Belex, Central Registry of the Securities and the target. Timeframe: immediately following the date of receipt of SEC approval.

- 6) Action: opinion of the target's management body on the offer (with the prior notification of the employees within three days from the announcement of the offer). Employees are then entitled to issue their opinion within the following five days). Timeframe: within ten days from the date of announcement of the offer.
- 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 up to a maximum of 70 days in the case of competing bids or up to a maximum 60 days if the offer is amended.
- 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: announcement of a report on the takeover in a daily newspaper with a nationwide circulation and delivery to the SEC, Belex and the target. 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 (if they are liquid) must be at least equal to the higher of:
  - a) the weighted price per share during a period of six months prior to the date when the obligation to launch the offer arose; or
  - b) the highest price per share paid by the bidder (or the person acting in concert with the bidder) at any time during a period of 12 months prior to the date when the obligation to launch the offer arose, including the price per share paid in the acquisition by which the obligation to launch a mandatory offer arose.
- If the shares in any of the TOB companies are not liquid (or not included at Belex or MTP), the TOB price per share must be at least equal to the higher of, (i) the highest price per share paid by the bidder (or the person acting in concert with the bidder) at any time during a period of 12 months prior to the date when the obligation to launch the offer arose, including the price per share paid in the acquisition for which the obligation to launch a mandatory offer arose, or (ii) the book value, or (iii) the appraised fair value as of the date when the obligation to launch a mandatory offer arose.
- As an exception to the above, when a person acquires at least 25% of voting shares from certain persons that were initially exempted from the obligation to launch a mandatory offer (point 2. below), such person is, if further acquisitions are made within the next two years, obliged to offer a price that may not be lower than the price for the acquisition of this initial package of shares.

## 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 withdrawing the 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 and a combination thereof. When the price is offered in a form of securities or as the combination of cash and securities, a bidder must also offer the cash payment as an alternative.

## 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 is not under a duty to announce a takeover offer, but intends to announce it. The bidder must, in this case, 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 disruptions 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 the acquisition or disposal of its own shares;
  - announce an offer relating to the shares of another company; and
  - 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 a condition, i.e. subject to a minimum threshold (percentage of shares) reached within the offer process. If such threshold is not reached, the bid shall be considered unsuccessful. If the threshold is reached, the bidder is obliged to take over all the shares deposited within the bid process (including those in excess of the threshold).

## 16.

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

- In the period between the date when the obligation to launch the offer arose and the end of the offer period, the bidder (or parties acting in concert) may not acquire (or agree to acquire) target voting shares nor can it dispose (or agree to dispose) of the 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);
  - 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 the 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 authorized member of the Central Registry (a bank or brokerage company). The process itself is usually performed by the lawyers and the brokerage company in cooperation.

## 19.

What are the regulatory fees for takeover proceedings?

- For the approval of a takeover offer/or the amendments by the SEC, a fee of 0.35% of the total deposited amount of the offered price/additionally deposited but not less than RSD 300,000 (approximately EUR 2.500)/RSD 200.000 (approximately EUR 1.640) 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 8,200 to 30,000) for legal entities;
  - RSD 100,000 to 200,000 (approximately EUR 820 to 1,640) for a responsible person within a legal entity; and
  - RSD 30,000 to 50,000 (approximately EUR 245 to 410) 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 order that person to announce the offer; however, such person (and the persons acting in concert) may announce that they will do so or will sell an appropriate number of shares (so that the total number of shares held does not exceed 25%).
- If a person under a duty to announce an offer fails to announce the offer under the terms and conditions provided by the TA, any shareholder of the target may request, before the court, the buy-out of its voting shares under the terms and conditions of the mandatory offer that should have been announced.

## 21.

What shareholding is generally required for a squeeze-out?

- 90% of the target shares (acquired in any manner i.e. by means of a takeover offer or not).

## 22.

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

- The squeeze-out can be performed under the price offered in the offer, if performed within three months after the end of the offer period at the latest. Otherwise, a squeeze-out may be performed at a price that is the highest from the market, book or the appraised value of shares.

## 23.

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

- The squeeze-out, after a takeover offer, must be performed under the same terms and conditions as the offer.
- If the 90% threshold is reached within a voluntary offer, additional condition must be fulfilled i.e. a bidder must have acquired within a voluntary offer at least 90% of the total shares that were subject to the offer.
- If the 90% of the shares is held by two or more persons acting in concert/affiliated, they must prove, in order to perform a squeeze-out of the remaining shares, that they had acted in concert/had been affiliated for at least one year preceding the date of the resolution on squeeze-out

## 24.

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

- Minority shareholders have a parallel right, i.e. if a majority shareholder holds 90% of the shares they are entitled to sell-out of their shares at a price that is the highest of the market, book or the appraised value of shares.

## 25.

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

- If the sell-out is performed upon the takeover offer, the request for sell out must be filed within three months after the end of the offer period and the sell-out may be requested at a price from the offer. After this period, minority shareholders may sell out under the regular terms and conditions (as stated under the point 24).





# Slovakia

## 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; and
  - 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.
- The parties may act in concert by concluding an agreement in a written, verbal or another legally acceptable form, if it clearly demonstrates their intent to be bound by its obligations.

## 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?

- There are no specific stipulations governing circumstances in which the bidder is allowed/obliged to carry out a due diligence of the target.
- The target's management is, however, under a general obligation to maintain confidentiality on sensitive information.
- 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 are no provisions in the Slovak Securities Act regarding deal protection measures which may be implemented by the bidder. There is also no established case law relating to deal protection measures.
- No-shop undertakings, material adverse effect clauses or exclusivity undertakings are commonly used measures in Slovakia. Importantly, the above-mentioned measures are complementary to the director's fiduciary duties and the duties under takeover law which must be observed.
- 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.)

## 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.

## 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 350 for approval of a voluntary takeover bid or a competing takeover bid;
- EUR 1,000 for approval of a mandatory takeover bid;
- EUR 40 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; and
- EUR 1,700 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 330 to EUR 664,000.
- Possible damage claims or financial sanctions 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)?

- Slovak law does not allow a simplified squeeze-out. There are no exemptions from the obligation to use an independent agent opinion or possibility of his/her total exclusion. A squeeze-out can be requested by the 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

## 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 1/3 of the voting rights.
- After exceeding the takeover threshold specified above, a renewed mandatory offer must be made upon acquisition of an additional 10% of the voting rights after a successful takeover bid procedure has been completed.
- The obligation to make such 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 public limited-liability company whose shares with voting rights are traded on the regulated market; or
- the target company is a public limited-liability company whose shares are not traded on the regulated market, but it 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:
  - by a gratuitous transaction between relatives;
  - by inheritance;
  - in a merger or split-up of a public limited liability company by swapping its securities for securities of the legal entity that has been dissolved as a result of the 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); and
  - on the basis of an enforceable decision adopted in criminal or offence proceeding.

- 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; and
  - the share of voting rights of another shareholder or group of shareholders in the target is higher;
- A creditor that has reached a takeover threshold or the additional takeover threshold through acquiring the securities of the target company that is subject to insolvency proceedings or is in the process of financial restructuring.
- A national bank or Member State bank is also not required to make a mandatory offer if it has reached the takeover or the additional takeover threshold through a realisation of a security (e.g. a pledge of vshares in the target) and if it does not intend to exercise its voting rights.
- A person who has reached a takeover threshold as a result of the process of financial restructuring is not required to make a mandatory offer if the acquisition of the target company's securities was made upon the prior approval of the Securities Market Agency ("ATVP").

### 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, or companies that are subsidiaries of the same controlling 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 three to five 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, it is banned from launching another offer for the same target for one year unless the withdrawal of the bid is approved by ATPV.

## 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?

- A fee of EUR 2000 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
  - the bidder has disposed of sufficient securities that it falls below the takeover threshold (or the additional takeover threshold);
- The company and responsible persons can be fined by the authorities with penalties ranging from approximately EUR 50,000 to EUR 150,000 for a company and approximately EUR 2,000 to EUR 10,000 for a responsible person in the company.
- Liability for potential damages claims from shareholders of the target.

## 21.

What shareholding is generally required for a squeeze-out?

- If a person or persons acting in concert obtain 90% of the target's voting shares, they may initiate a squeeze out procedure.

## 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

## 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, planned or unanticipated, acquisitions of shares or securities conferring voting rights (together, the "securities"); (b) shareholders' agreements concluded with the purpose of gaining control of the company ("acting in concert"); (c) voting rights held by companies belonging to the same group of companies; (d) voting rights that may be exercised on a free and long term basis by virtue of a power of attorney, without any vote instructions; (e) voting rights held by a nominee; and (f) 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.
- A mandatory offer is also triggered (i) when a company resolves to de-list its shares from the Spanish official markets; and (ii) when a listed company resolves to reduce its share capital by acquiring shares for the subsequent redemption thereof.
- 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 in the following events:
  - Acquisition of 30% of the target's voting rights when another person or entity directly or indirectly holds an equal or higher percentage of voting rights in the target. This exemption is conditional upon a) the other person not reducing its voting rights below that of the exempted person, or b) the exempted person not appointing more than half of the members of the board.
  - Acquisitions carried out by certain public bodies or entities.
  - Acquisition resulting from the exercise of powers legally vested in public administrations.

- If all of the holders of securities unanimously resolve to transfer such securities or to waive the application of the public offerings regime.
  - Acquisitions resulting from the capitalisation of credits into shares in listed companies, the financial viability of which is in danger, provided that said transactions are intended to secure the financial recovery of the relevant company.
  - “Mortis causa” free acquisitions.
  - “Inter vivos” free acquisitions, provided that the acquirer has not acquired shares during the 12 month term preceding the relevant free acquisition and there is no agreement between the acquirer and the transferor.
  - Obtaining control as a result of a voluntary offer, provided that a) it was launched at an equitable price; or b) it was accepted by holders of securities representing, at least, 50% of the voting rights to which the offer was addressed (excluding those already held by the bidder or parties acting in concert therewith).
  - Acquisitions as a result of a merger transaction, provided that i) the acquirer has not voted in favour of the merger; and ii) the merger was carried out in order to achieve industrial and entrepreneurial goals rather than to obtain control.
- 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; a) 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; or b) the CNMV approves the exemption from the mandatory offer obligation.
  - With respect to mandatory offers resulting from the de-listing of a listed company’s shares from the Spanish official markets, no mandatory offer shall apply in the following cases i) if the requirements for a squeeze-out or a sell-out are met; ii) if the holders of the securities affected by the de-listing unanimously approve such a de-listing and waive the application of a public offers regime; iii) if the company is extinguished as result of a corporate transaction by virtue of which its shareholders receive shares in another listed company; iv) if a prior public offer is to be launched and the intention to de-list the shares of the company has been announced; and v) if the shareholders or the bond holders approve a proceeding that, at the CNMV’s discretion, may be deemed equivalent to a public offer.

### 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 on the date on which the takeover regulations came into effect must launch a mandatory offer 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%; and
  - acquisition of additional voting rights and subsequent appointment, within 24 months following the acquisition, 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.

## 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) Drafting of the prospectus containing the terms of the offer: one to three months.
  - 3) Presentation of the request for authorisation: one month from the date on which the obligation to launch a public offer arises. In the event of indirect or unanticipated acquisitions, applicable term will be three months.
  - 4) Admission of the request: seven working days.
  - 5) Authorisation: 20 working days from receipt of the request.
  - 6) Advertising and publishing of the offer: five working days from the granting of the authorisation.
  - 7) Offer acceptance period: 15–70 days from the first working day following the publication of the first announcement.
  - 8) Issuing of a report by the target’s board of directors: 10 days from the date on which the offer acceptance period commences.
  - 9) End of the offer period: five working days.
  - 10) Publication of the result of the offer: two working days.(APPROXIMATE) TOTAL: three to seven months

## 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 the addressees of the offer.
- The bidder is always permitted to be changed if he is acting in concert with other parties. Modification of the terms of the offer, including the identity or composition of the bidder, must be included in a supplement to the prospectus and must be published within three days.

## 9.

Is the bidder entitled to withdraw the offer?

- A mandatory offer may be withdrawn in the following cases:
  - If, as a result of exceptional circumstances outside the bidder's control, the offer cannot be carried out or it turns out to be clearly infeasible, provided that prior approval from the CNMV is obtained.
  - If the acquisition is subject to approval from the antitrust authorities and, prior to the expiry of the offer acceptance period, the competent authorities; a) refuse to approve the acquisition; b) impose conditions on the acquisition; or c) fail to issue a resolution on the approval of the acquisition. Under this scenario, the bidder shall be obliged to reduce its stake below 30% or terminate the shareholders' agreement providing control over the target.
  - If a competing offer whose terms are better than those of the relevant mandatory offer is approved.
- The bidder shall immediately notify the CNMV of its decision to withdraw the offer.

## 10.

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

- This is permissible. However, 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 triggered as a consequence of having obtained control over the target (including when a voluntary offer becomes a mandatory offer pursuant to the applicable rules).
  - In case of an exchange offer, unless the consideration offered consists of a shares securities issued on an EU Member State'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 consideration offered within the offer consists of securities in the target and the bidder or a person acting in concert therewith acquire said securities outside the offer and after the publication of the offer's announcement.

- Where the consideration offered within the offer consists of securities in a company other than the target and the bidder or a person acting in concert therewith acquire said securities outside the offer and after the publication of the offer's announcement.

## 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.

## 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 management board needs to obtain the authorisation of the shareholders' general meeting before implementing any measure which may prevent the offer from succeeding.
- 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 States which have not implemented the board neutrality rule or equivalent rules.

## 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; and
  - 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 10,000 and a maximum of EUR 200,000.

## 20.

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

- Statutory suspension of the bidder's political rights (including voting rights and pre-emptive rights) (and parties acting in concert) until a mandatory offer is made.
- 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;
  - the bid has been accepted by the holders of securities representing at least 90% of the voting rights to which it was addressed; and
  - 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

## 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% of the voting rights ("opting up") or state that no acquirer will be required to submit a mandatory offer at all ("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 sharecapital is decreased and immediately increased; and
  - 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 Swiss Takeover Board 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; and
  - 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".
- However, the term "acquisition of equity securities/voting rights" is to be understood in a broad manner and comprises all manner of direct and indirect acquisitions, which – if the respective thresholds are reached or exceeded – trigger the obligation to submit a mandatory offer.
- If the Swiss Takeover Board becomes aware of persons that do not comply with the provisions on mandatory offers, it may suspend the voting rights of such person and/or bar such person from acquiring further equity securities in the target (cf. below, section 20),

### 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 Federal Audit Oversight Authority (FAOA).
  - 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 on the website of the bidder or a website specifically dedicated to the mandatory offer, and submission of the offer to the relevant Swiss media (newspapers with national coverage, press agencies and electronic media) and the Swiss Takeover Board.
  - 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 must correspond at least to the higher of a) 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) 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.
- 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 (so-called best price rule).

## 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, limited and exceptional 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; and
- 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 the FAOA.
- 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 250m (i.e. currently approx. EUR 230m);
  - 0.2‰ for consideration between CHF 250m and CHF 625m (i.e. between currently approx. EUR 230m and EUR 575m); and
  - 0.1‰ for consideration above CHF 625m (i.e. currently approx. EUR 575m).
- The minimum fee amounts to CHF 50,000 (i.e. currently approx. EUR 46,000) and the maximum fee is CHF 250,000 (i.e. currently approx. EUR 230,000). 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?

- The Swiss Takeover Board may, until clarification of whether or not an obligation to submit an offer exists and whether such offer has been submitted, suspend the voting rights and other rights related to the securities of the person in question and bar such person from acquiring any further equity securities of the target.

## 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.





# Turkey

## 1.

What transactions/actions generally trigger a mandatory offer?

- Direct or indirect acquisition of shares or voting rights granting control of a corporation through a voluntary partial takeover bid, by way of a block, through individual acquisitions or by any other method.
- Acting in concert.

## 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 voluntary takeover bid has been submitted to all shareholders with respect to all of the shares in their possession;
  - the special written arrangement which grants control without the acquisition of shares introduces a break-away right to shareholders who have attended the relevant general assembly meeting for the approval of the relevant arrangement and who have voted against such approval;
  - the shareholding ratio of the controlling shareholder falls below the threshold required for due control (i.e. more than 50%) and such shareholder subsequently reacquires more than 50% of voting rights of the corporation, provided that the control of the corporation is not acquired by third parties during the term in which the controlling shareholder's voting rights remain under the required ratio for due control;
  - the acquisition is made by way of an intra-group transfer and therefore the same persons continue to keep control; and
  - the shares are acquired from a controlling shareholder and the joint control of the target corporation is maintained through an agreement executed with such controlling shareholder, provided that the acquiring shareholders holds less than 50% of the voting rights after such acquisition.

### 3.

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

- “Acting in concert” refers to real persons or legal entities who enter into a co-operation which relies on an explicit or implicit, verbal or written agreement; a) with the offeror with a view to acquiring control of the target corporation; or b) with the target corporation with a view to preventing the successful completion of a bid process.
- Furthermore, in determining whether real person and/or legal entity shareholders of a publicly held corporation have control over the relevant entity or not, the persons set out below shall also be deemed to act in concert with the relevant real person or legal entity shareholders:
  - corporations controlled by the relevant real person or legal entity shareholders; and
  - real persons and/or legal entities holding control of the relevant legal entity shareholders, and corporations controlled by such persons.
  - The parties acting in concert are liable for their actions in the same manner as the offeror and, as the case may be, the target entity.

### 4.

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

- Creeping-in scenarios have not been explicitly regulated from a mandatory offer perspective. But the applicable legislation merely regulates when the acquisition of “control” (regardless of the number of shares held/acquired) triggers a mandatory offer scenario, and not when a certain shareholding ratio is reached through a block transaction or by virtue of several acquisitions. In this respect, the mandatory offer process will be triggered as long as control of the target entity has been acquired, even though the acquisition relates to, e.g., only 1% of the share capital of the target entity (e.g. control is acquired through privileged/preferential 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 generally requires at least four (4) months. Statutory conditions (e.g. merger control proceedings) may further delay the process.
- Principal stages of the offer process:
  - 1) Filing of offer documents with the Capital Markets Board within six (6) business days after the date of acquisition of the shares granting control, together with the relevant documentation for approval. For voluntary offers: filing of offer documents with the Capital Markets Board within ten (10) to twenty (20) business days after announcement of the bidder’s intention to launch an offer (extension to thirty (30) business days can be requested).
  - 2) Publication of offer information form within three (3) business days from approval by the Capital Markets Board.
  - 3) Submission of the relevant gazette extracts evidencing the publication of the offer information form to the Capital Markets Board within six (6) days as of publication.
  - 4) Offer period of ten (10) – twenty (20) business days after publication of the offer documents.

## 6.

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

- The (minimum) price cannot be lower than; a) the arithmetical average of daily weighted average stock prices occurring during a period of six (6) months preceding the date of disclosure to the public of the agreement relating to the sale of shares; and b) the highest consideration paid by the offeror or the persons acting in concert with the offeror for the same group of shares of the target corporation within a six month period preceding the offer date, taking into consideration any direct share purchases leading to the mandatory offer.
- In case of an indirect change of control, the offer price cannot be less than the higher of:
  - the price specified in the assessment report required by Capital Markets Board assessment regulations to determine the share price of the target corporation;
  - the highest price offered by the offeror or the persons acting in concert with such offeror in purchases of shares of the target corporation within a period of six months preceding the date of disclosure to the public of any relevant agreement relating to the transfer of shares leading to an indirect change of control of the target corporation; or
  - if the shares of the target corporation are traded on the stock exchange, the arithmetical average of the daily weighted average stock prices occurring during a six (6) month period preceding the date of disclosure to the public of the agreement relating to the sale of shares.
- If more than one (1) share group representing the share capital of the target corporation is available, the consideration payable for shares included in a group or groups not covered by the transfer of shares leading to the obligation to make an offer cannot be less than the higher of:
  - the price specified in the assessment report required by Capital Markets Board assessment regulations; ;
  - the highest consideration offered by the offeror or persons acting in concert with such offeror in the purchase of shares included in a group or groups not covered by the transfer of the shares leading to the obligation to make an offer within the six (6) month period preceding the date of disclosure to the public of an agreement, if any, relating to the sale of shares; or
  - if the shares included in the group or groups not covered by the relevant transfer of shares leading to the obligation to make an offer are traded on the stock exchange, the arithmetical average of the daily weighted average stock prices during the six (6) month period preceding the date of disclosure to the public of any agreement relating to the sale.

## 7.

May the bidder modify the offer price?

- In case the offeror or the persons acting in concert purchase the shares of the target corporation at a price higher than the offer price during the period between the date of public disclosure of the acquisition and the expiry date of the period of the actual takeover bid, the offer will have to be re-determined so as not to be less than the highest price paid for the purchased shares.

## 8.

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

- It is only possible to modify the terms of a voluntary offer with respect to its scope (i.e. the shares subject to the offer) and the consideration payable.
- 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?

- No.

## 10.

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

- Yes, offers may be submitted in cash, securities or a combination thereof. However, only securities traded in the stock exchange may be made subject to an offer.

## 11.

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

- The decision to make an offer.
- The basis for a mandatory offer is established, regardless of whether an exemption is requested and, if this is the case, the legal basis for such exemption request.
- Information on the offer price or the method of determination of the offer price.
- Any application to the Capital Markets Board with respect to an exemption request.
- The response of the Capital Markets Board with respect to the mandatory offer and/or exemption request.
- Summary or conclusion sections of the assessment reports prepared for the purposes of the determination of the offer price.
- Number and value of shares purchased through the stock exchange or through the over-the-counter market and the number of shareholders responding to the offer as of the end of each trading day during the takeover bid period.
- Details of the shareholding structure and the management of the target, as at the end of the offer period.
- Waiver of any attempt to collect shares through voluntary offers.
- Measures taken to ensure price equality.

## 12.

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

- This issue is not explicitly regulated.
- In principle, 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.

## 13.

What deal protection measures may a bidder implement?

- The offeror is under the obligation to take all required actions and measures before the disclosure of the information pertaining to the offer, in order to ensure the full payment of the offer price at the end of the relevant offer period. The Capital Markets Board may further request that the offeror receive a bank guarantee from a bank or a third party legal entity securing the payment of the offer price.
- Irrevocable undertakings of shareholders generally are permissible, but may establish "acting in concert".

## 14.

What provisions exist relating to board neutrality?

- General principles on board neutrality apply.

## 15.

What conditions are permissible for mandatory offers?

- Mandatory offers must be unconditional.

## 16.

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

- Yes, however, the consideration payable under the mandatory offer should be adjusted/increased (and the difference should be paid to the relevant shareholders if the transfer is already concluded) to the extent that the consideration payable under the parallel offer is higher.

## 17.

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

- The offeror is under an obligation to take all required actions and measures before the disclosure of the information pertaining to the offer in order to ensure the full payment of the offer price at the end of the relevant offer period. The Capital Markets Board may further request that the offeror receive a bank guarantee from a bank or a third party legal entity securing the payment of the offer price.

## 18.

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

- Yes, the transfer is implemented by investment firms engaged by the offeror(s) pursuant to the method of transfer stipulated and declared in the information form.

## 19.

What are the regulatory fees for takeover proceedings?

- No statutory fees are payable to the Capital Markets Board. Other ancillary fees, such as stamp duty on the transaction documents relating to the sale arrangement, may apply.
- Fees payable to the investment firms are negotiable.

## 20.

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

- A fine to an amount corresponding to the consideration payable for the shares subject to the offer.
- Statutory suspension of voting rights of the bidder (and parties acting in concert) until a mandatory offer is made.
- Possible damage claims from current and former target shareholders.

## 21.

What shareholding is generally required for a squeeze-out?

- 98% of the relevant company's voting rights (as of one January 2018 – before such date, the shareholding ratio required for a squeeze-out is 97%).

## 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) the bidder has acquired 98% or more of the affected shares through or in connection with the bid; and
  - b) a squeeze-out resolution is adopted (and announced) within three (3) 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 relevant company must appoint advisors for the preparation of a valuation report for the determination of the price per share.
- The controlling shareholder (holding at least 98%) must pay the consideration to the company's account within three (3) days following the Capital Market Board's approval of the squeeze-out process.
- With respect to listed companies, the squeeze-out price must be kept in a blocked account until the expiry of a three (3) year period from the date of cancellation of the share certificates representing the shares held by the departing shareholders (alternatively, a bank guarantee must be deposited).
- The squeeze-out consideration must be paid in cash and in Turkish Liras.

## 24.

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

- Within three (3) months following the publication of the completion of:
  - a) a voluntary squeeze-out offer (i.e. a voluntary offer where the bidder has obtained more than 98% of the voting share capital (as of 1 January 2018 – please see our response in Question 21 above); or b) purchase of any additional shares by the shareholder holding at least 98% of the voting share capital.

## 25.

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

- There are no other particular requirements.



# United Kingdom

## 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 it 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 it is interested.
- A person is treated as “acquiring” voting rights if they purchase existing shares from another shareholder, subscribe for new shares issued by the company or, in some circumstances, if the percentage of voting rights that they hold increases as a result of the company buying back shares that are held by other shareholders.
- 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 or multilateral trading facility in the UK (such as the Official List/Main Market or AIM respectively) 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:
  - at any time any of their securities have been admitted to trading on a regulated market or multilateral trading facility in the UK or on any stock exchange in the UK, the Channel Islands or the Isle of Man; 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
  - at any time they have filed a prospectus for the admission to trading or the issue of securities with the UK Financial Conduct Authority or with any other relevant authority in the UK, the Channel Islands or the Isle of Man.
- 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, provided that the waiver is approved by a simple majority of shareholders in the target who are independent (i.e. who are 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 it so as to reduce its interest and that of persons acting in concert with it 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. In exceptional circumstances the Panel may agree that persons in the same category will not be treated as acting in concert with each other.
- “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 must remain open for acceptance for at least 21 days from the date the offer document is published. If the offer does not become unconditional as to acceptances (i.e. the bidder’s stake in the target company, taking into account both its existing holding and acceptances of its mandatory offer, is only 50% or less of the total number of voting rights), 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 mandatory 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 before any such offer is triggered.
- 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 also 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.
  - 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. Normally the target will be responsible for making such an announcement.
  - 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). Normally this means more than six parties.
- If the target makes an announcement, either mandatorily in one of the above circumstances or voluntarily, that commences an offer period, the announcement must normally identify every potential bidder with whom the target is in talks or from which an approach has been received and not unequivocally rejected. Each such potential bidder then has 28 days to either (i) announce a firm intention to make an offer for the target or (ii) announce that it will not be making an offer. This so-called "put up or shut up" deadline can be extended by the Panel at the request of the target.

## 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 bona fide 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 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. Giving an irrevocable undertaking to accept an offer does not, of itself, mean that the target shareholder giving the undertaking will be treated as "acting in concert" with the bidder.
- As a general rule, the Code prohibits a target from agreeing to pay a break fee to the bidder and from entering into any other kind of "offer-related arrangement" with the bidder or any person acting in concert with it. "Offer-related arrangement" means, broadly, any agreement or arrangement that might have the effect of (i) restricting the target board's ability to facilitate or recommend a competing offer or (ii) deterring a competing bidder, or causing a competing bidder to offer less favourable terms than it otherwise would have done. It includes agreements to co-operate with the bidder in relation to the bid; agreements not to solicit a competing bid; and undertakings to inform the original bidder of any approach from another bidder.

## 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. Target directors who have a conflict of interest (e.g. by virtue of having a connection with the bidder) must not take part in board discussions about the offer.

## 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 Phase 2 merger control proceedings are initiated either by the UK Competition and Markets Authority or the European Commission before the offer has gone unconditional as to acceptances.

## 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 must secure its financing before triggering a mandatory offer. Both the announcement of the offer and the offer document itself must include a statement that its independent financial adviser has confirmed that the bidder has the financial resources necessary to satisfy full acceptances of the offer.

## 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 the 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 legal counsel.

## 19.

What are the regulatory fees for takeover proceedings?

- Document charges are payable to the Panel. They range from GBP 2,000 if the value of the offer is GBP 1 to 5m (maximum: 0.20% of the value of the offer) to GBP 350,000 if the value of the offer is over GBP 5bn (maximum: 0.007% 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 it prefers (although if it elects for a form of consideration that has ceased to be available, it will be entitled only to an equivalent amount of cash).



# Ukraine

**Note:** New legislation introducing the possibility of a squeeze-out is under consideration.

## 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 (a “Controlling Stake”, and such a person being a “controlling shareholder”) of a 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 the Controlling Stake in a JSC by means of universal succession or inheritance 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 (and their affiliates) 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 120 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 shall be determined as of the day before the day when a person (or persons acting in concert) acquires the Controlling Stake in a JSC.
- The market value of the shares which are not traded on a stock exchange is defined by certified appraisers in accordance with 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 right/responsibility to affirm or increase the relevant market value of the shares, by up to 10 per cent.

## 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. Although there is no express prohibition against modifying the offer, the common view is that any modifications improving the terms of the offer (i.e. increasing the purchase price, etc.) may theoretically be possible (provided that such modifications are distributed in the same manner as the initial offer). Any modifications worsening the terms of the offer may potentially result in claims from the affected minority shareholders.

## 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. However, the prevailing view, based on systematic analysis of the underlying regulation, is that currently only cash offers are permissible.

## 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.
- Such obligation is not applicable to persons (or persons acting in concert), who already hold 10% or more of the ordinary shares of a JSC.

## 12.

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

- There are no particular legal requirements in this respect, however, as a general rule the target's management must act in the interests of the target and is under an obligation not to disclose commercial secret and confidential information.
- The prevailing view and practice is that the due diligence may be carried out after a non-disclosure agreement is put in place.

## 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, however, it may require clearance from the antimonopoly authority.
- Irrevocable undertakings of shareholders are not applicable under Ukrainian law.
- The bidder and the shareholders may agree upon any break fees payable by the target, but their enforcement may be problematic in practice.

## 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?

- An independent appraiser should be involved in the offer process to determine the fair market value of shares and the purchase price, unless the fair market value is determined on the basis of quotations for the shares on stock exchanges (for shares which are traded on a stock exchange).

## 19.

What are the regulatory fees for takeover proceedings?

- The standard application filing fee for obtaining antimonopoly authority clearance (if required) amounts to UAH 20,400 (approximately EUR 700).
- 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 480 (approximately EUR 17).

## 20.

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

- The law does not contain specific penalties for a failure to make a mandatory offer, however, the bidder may be subject to a general penalty in the amount of up to UAH 17,000 (approximately EUR 585) for violation of securities regulation.
- Specific performance and damages claims by the affected minority shareholders are theoretically possible (although there is no consistent court practice in this respect).

## 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 the Controlling Stake is obliged to offer to acquire shares from the other shareholders, but has no right to squeeze-out any other 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 rights exist outside of the mandatory offer process and, in particular, 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.

# Contacts

## Albania

### Mirko Daidone

T +355 4 430 2123  
E mirko.daidone@cms-aacs.com

### Edita Poro

T +355 4 430 2123  
E edita.poro@cms-aacs.com

## Austria

### Peter Huber

T +43 1 40443 1650  
E peter.huber@cms-rrh.com

### Bartholomäus Matt

T +43 1 40443 1650  
E bartholomaeus.matt@cms-rrh.com

## Belgium

### Carl Leermakers

T +32 2 74369 12  
E carl.leermakers@cms-db.com

## Bosnia and Herzegovina

### Nedžida Salihović-Whalen

T +387 33 94 4610  
E nedzida.salihovic-whalen@cms-rrh.com

### Zlatan Balta

T +387 33 94 4611  
E zlatan.balta@cms-rrh.com

## Bulgaria

### Atanas Bangachev

T +359 2 92199 13  
E atanas.bangachev@cms-cmck.com

### Gentscho Pavlov

T +359 2 447 1350  
E gentscho.pavlov@cms-rrh.com

### Borislava Pokrass

T +359 2 92199 96  
E borislava.pokrass@cms-rrh.com

### Ivan Gergov

T +359 2 447 1350  
E ivan.gergov@cms-rrh.com

## China

### Ulrike Glueck

T +86 21 6289 6363  
E ulrike.glueck@cmslegal.cn

### Kevin Wang

T +86 21 6289 6363  
E kevin.wang@cmslegal.cn

## Croatia

### Hrvoje Bardek

T +385 1 4825 600  
E hrvoje.bardek@bmslegal.hr

## Czech Republic

### Helen Rodwell

T +420 2 96798 818  
E helen.rodwell@cms-cmck.com

### Patrik Przyhoda

T +420 2 96798 858  
E patrik.przyhoda@cms-cmck.com

## France

### Jacques Isnard

T +33 1 4738 5500  
E jacques.isnard@cms-bfl.com

### Bruno Zabala

T +33 1 4738 5500  
E bruno.zabala@cms-bfl.com

## Germany

### Henrik Drinkuth

T +49 40 37630 367  
E henrik.drinkuth@cms-hs.com

### Karsten Heider

T +49 711 9764 274  
E karsten.heider@cms-hs.com

### Martina Schmid

T +49 711 9764 670  
E martina.schmid@cms-hs.com

## Hungary

### Anikó Kircsi

T +36 1 48348 27  
E aniko.kircsi@cms-cmck.com

### Gábor Gelencsér

T +36 1 505 4915  
E gabor.gelencser@cms-cmck.com

## Italy

### Pietro Cavasola

T +39 06 4781 51  
E pietro.cavasola@cms-aacs.com

## Luxembourg

### Julien Leclère

T +352 26 2753 28  
E julien.leclere@cms-dblux.com

### Andreia Carvalho Moreira

T +352 26 2753 36  
E andreia.moreira@cms-dblux.com

### Stephanie Villani

T +352 26 2753 48  
E stephanie.villani@cms-dblux.com

#### The Netherlands

##### Reinout Slot

T +31 20 3016 319  
E reinout.slot@cms-dsb.com

##### Clair Wermers

T +31 20 3016 423  
E clair.wermers@cms-dsb.com

##### Marlene Veenman

T +31 20 3016 205  
E marlene.veenman@cms-dsb.com

#### Poland

##### Jakub Szczygiał

T +48 22 520 5514  
E jakub.szczygial@cms-cmck.com

##### Dariusz Greszta

T +48 22 520 5672  
E dariusz.greszta@cms-cmck.com

##### Michał Pawłowski

T +48 22 520 5553  
E michal.pawlowski@cms-cmck.com

#### Portugal

##### Francisco Xavier de Almeida

T +351 21 09581 00  
E francisco.almeida@cms-rpa.com

##### Magarida Vila Franca

T +351 21 09581 00  
E margarida.vilafrance@cms-rpa.com

##### Andre Guimaraes

T +351 21 09581 00  
E andre.guimaraes@cms-rpa.com

#### Romania

##### Cristina Reichmann

T +40 21 4073 866  
E christina.reichmann@cms-cmck.com

##### Claudia Popescu

T +40 21 4073 869  
E claudia.popescu@cms-cmck.com

##### Horea Popescu

T +40 21 4073 824  
E horea.popescu@cms-cmck.com

#### Russia

##### Vladimir Zenin

T +7 495 786 4030  
E vladimir.zenin@cmslegal.ru

##### John Hammond

T +49 711 9764 788  
E john.hammond@cmslegal.ru

#### Serbia

##### Marija Tešić

T +381 11 3208 900  
E marija.tesic@cms-rrhs.com

##### Radivoje Petrikić

T +381 11 3208 900  
E radivoje.petrikic@cms-rrh.com

#### Slovakia

##### Peter Šimo

T +421 911 251911  
E peter.simo@cms-rrh.com

#### Slovenia

##### Aleš Lunder

T +386 1 62052 10  
E ales.lunder@cms-rrh.com

#### Spain

##### Carlos Peña

T +34 91 4519 290  
E carlos.pena@cms-asl.com

##### Irene Miró

T +34 91 4520 188  
E irene.miro@cms-asl.com

#### Switzerland

##### Stephan Werlen

T +41 44 285 11 11  
E stephan.werlen@cms-vep.com

#### Turkey

##### Döne Yalçın

T +90 212 401 4260  
E done.yalcin@cms-rrh.com

##### Alaz Eker Undar

T +90 212 401 4252  
E alaz.undar@cms-rrh.com

#### United Kingdom

##### Gary Green

T +44 20 7367 2111  
E gary.green@cms-cmck.com

##### Peter Bateman

T +44 20 7367 3145  
E peter.bateman@cms-cmck.com

#### Ukraine

##### Maria Orlyk

T +380 44 500 1718  
E maria.orlyk@cms-rrh.com

##### Tetyana Dovgan

T +380 44 39137 18  
E tetyana.dovgan@cms-cmck.com



**Your free online legal information service.**

A subscription service for legal articles  
on a variety of topics delivered by email.  
**[cms-lawnow.com](http://cms-lawnow.com)**



**Your expert legal publications online.**

In-depth international legal research  
and insights that can be personalised.  
**[eguides.cmslegal.com](http://eguides.cmslegal.com)**

-----

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Medellín, Mexico City, Milan, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

-----

**[cms.law](http://cms.law)**