

**TAKEOVER REGULATION
IN THE JURISDICTIONS OF SOME IOSCO EMC MEMBERS**



OICU-IOSCO

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Table of Content

Part I

| | |
|---|----|
| Introduction | 3 |
| 1. General remarks | 3 |
| 2. Investor disclosure obligations | 4 |
| 3. Public company disclosure obligations | 7 |
| 4. Tender offers | 8 |
| 5. Why is it necessary to regulate take over bids and what related experience has been acquired | 13 |
| 6. Issues to be addressed | 16 |
| Conclusion | 17 |

Part II

(Compilation of responses to the survey)

| | |
|---|-----|
| Albania | 19 |
| Argentina | 26 |
| Barbados | 32 |
| Bolivia | 41 |
| Brazil | 45 |
| Bulgaria | 53 |
| China | 61 |
| Croatia | 68 |
| Czech Republic | 83 |
| Egypt | 92 |
| Hungary | 98 |
| India | 108 |
| Jordan | 131 |
| The Republic of Korea | 138 |
| Lithuania | 145 |
| Former Yugoslav Republic of Macedonia | 153 |
| Malaysia | 164 |
| Malta | 171 |
| Mauritius | 178 |
| Nigeria | 183 |
| Oman | 190 |
| Pakistan | 194 |
| Philippines | 202 |
| Poland | 210 |
| Romania | 218 |
| Slovenia | 229 |
| South Africa | 239 |
| Sri Lanka | 249 |
| Chinese Taipei | 260 |
| Thailand | 269 |
| Turkey | 279 |
| Uruguay | 290 |
| Venezuela | 298 |
| Vietnam | 308 |

Part I

Introduction

This report was prepared by the IOSCO EMC Working Group on Enforcement and Exchange of Information and endorsed by the IOSCO Emerging Markets Committee during its 4 April 2005 meeting. Its key objective is to provide a comparative analysis of the existing regulatory frameworks for the *acquisition of substantial blocks of shares and take-overs of public companies* in the jurisdictions of some IOSCO EMC members.

This report consists of two parts. Part I presents the above mentioned comparative analysis and in particular highlights common features. Although the surveyed regulatory frameworks were found to be generally quite similar, some substantive differences were identified. Part II presents the detailed responses provided by the surveyed EMC members to a specialized questionnaire circulated by EMCWG-4. The information gathered from thirty four EMC members enabled the development of a substantive specialized database, which was subsequently used to perform the analysis presented in Part I of this report. Part II will also provide to the interested reader detailed information on the existing take-over regulatory frameworks in all the surveyed jurisdictions.

1. General Remarks

1.1 Scope of the research

The analysis was carried out on the basis of a survey covering the following jurisdictions: Albania, Argentina, Barbados, Bolivia, Brazil, Bulgaria, China, Croatia, Czech Republic, Egypt, Hungary, India, Jordan, Republic of Korea, Lithuania, Macedonia, Malaysia, Malta, Mauritius, Nigeria, Oman, Pakistan, Philippines, Poland, Romania, Slovenia, South Africa, Sri Lanka, Chinese-Taipei, Thailand, Turkey, Uruguay, Venezuela and Vietnam.

1.2 Authority responsible for take-overs

In most jurisdictions the authority responsible for the regulation of take-overs of listed companies is a government body designed solely for the supervision of capital markets. However, six jurisdictions have adopted an integrated supervisory model for the financial sector (Bolivia, Bulgaria, Hungary, South Korea, Mauritius and Uruguay). None of the surveyed jurisdictions has a separate authority designed to exclusively deal with take-overs.

1.3 Form of regulation

The most common way of regulating take-overs on a public capital market is through duly adopted legislation and by implementing regulation put in place by the government or the government securities regulator (hereinafter referred to as SEC). Six jurisdictions have implemented a broader regulatory model that includes self-regulatory measures set by the markets and company decisions duly approved by the shareholders within the framework of company law (Albania, Barbados, Jordan, Malta, South Korea and Philippines). It was found that there is no specific regulation for take-overs in two jurisdictions (Bolivia and Uruguay).

2. Investor disclosure obligations

2.1 Investors' obligation to disclose the acquisition of substantial blocks of shares

In all the surveyed jurisdictions an investor acquiring a substantial block of shares in a publicly traded company is required to disclose the transaction.

2.2 Requirements related to the number of shares and the votes at the general meeting of shareholders

In a majority of the surveyed jurisdictions, disclosure requirements are related to the number of votes at the general meeting of shareholders (hereinafter referred to as the GMS). In China each company share can only hold one vote. In Jordan securities traded on the stock exchange may only hold one vote. In Egypt, Jordan, Malta, Oman, Slovenia, Sri Lanka and Vietnam disclosure requirements are related only to the number of shares, not to the related votes. In Barbados, Brazil, Nigeria, Pakistan, Philippines, Chinese Taipei and Turkey, the number of votes and the number of shares held must be disclosed. It is interesting to note that in the Philippines the number of shares held must be disclosed for a tender offer while the number of corresponding votes is the information that must be disclosed for a merger or for a consolidation. South Korea has set a five-per-cent disclosure threshold related to the number of votes and a ten-per-cent disclosure threshold related to the number of shares. In Venezuela the legislation refers indistinctly to shares, voting rights or any kind of agreement that can produce the following results: acquiring i) a significant share ownership¹ of a corporation using money or exchanging shares/rights or ii) reaching the majority control² of a corporation.

2.3 The disclosure thresholds

Basically there are two systems of disclosure thresholds:

- 2.3.1 multiple fixed thresholds (Albania, Argentina, Brazil, Jordan, Malaysia, Mauritius – 5%; Bulgaria, Hungary, Macedonia, Nigeria, Chinese Taipei, Thailand – 5% and a subsequent multiple of 5%; Croatia, Czech Republic – 5%, 10%, 15%, 20%, 25%, 30%, 1/3, 40%, 45%, 50%, 55%, 60%, 2/3, 70%, 75%, 80%, 90%, 95%; Oman – 10%, 25%, 50% and 75%; Egypt – 5% and 15%; South Korea – 5% and 10%; Lithuania and Turkey – 10%, 20%, 25%, 33,3%, 50%, 66,6% and 75%; Pakistan, Sri Lanka – 10% and 25%; Philippines – 5% for narrative and more comprehensive disclosures and 10% for quantitative presentation; Romania – 5%, 10%, 20%, 33%, 50%, 75% and 90%; Venezuela – 10% and any acquisition percentage that allows reaching the political majority control³ of a company);
- 2.3.2 one or a few fixed thresholds and, after achieving specified thresholds, further disclosure obligations arising upon the acquisition or the selling of shares

¹ Obtaining the control or increasing the stock ownership by more than 10% of a publicly traded company's capital.

² More than 50% of share ownership or any lesser percentage that gives or may give effective control at the GMS.

³ See footnote 2.

representing specified number of votes at the GMS (Barbados – the general threshold is 25% of the equity but a shareholder who owns 10% of the shares in a listed company shall declare every trade within one week; China – 5% and 1% up and down when a shareholder holds more than 5%; India – 5%, 10%, 14% and for every 2% purchase or sale after crossing the 15% mark until reaching 75%; Poland – a disclosure obligation exists for the acquisition and disposal of shares resulting in a change in the portion of the votes held by shareholders who originally held more than 5% and 10% of the votes, by at least 2% of the total votes at the GMS in the case of a public company whose shares have been approved for trade on a regulated stock exchange; Vietnam – 5%, 10%, 20% and for transactions to increase or reduce ownership above this level).

2.4 The investor's obligation to inform market participants

In almost all the surveyed jurisdictions investors acquiring a substantial block of shares have an obligation to inform the company and the competent supervisory authority. In Jordan, Nigeria, Oman and Venezuela the investor has only the obligation to inform the competent supervisory authority. Some jurisdictions impose the following additional disclosure requirements:

- (a) the investor must notify the exchange (Argentina, Barbados, Bulgaria, Croatia, India, South Korea, Malaysia, Mauritius, Philippines, Sri Lanka, Turkey, Vietnam);
- (b) the investor must notify a news agency (Brazil, Hungary, Macedonia, Chinese Taipei);
- (c) the investor must notify both the exchange and a news agency (China, Egypt, Pakistan);
- (d) in Poland the investor must to notify the company, the competent supervisory authority and the Office for Competition and Consumer Protection (Poland's antimonopoly authority).

2.5 The disclosure deadlines

The time period for the disclosure varies in the surveyed jurisdictions from immediately to a period of several days after the acquisition or disposal of shares: Argentina, Brazil – immediately; Barbados – 24 hours; Czech Republic – 3 working days; Hungary – 2 calendar days; Jordan and Lithuania – 7 days; Poland – 4 days after the registration of shares on the securities account (which is coherent with the settlement procedure); Romania – 5 business days; Turkey – the next working day until 9.00 a.m. In the Philippines the supervisory authority must be informed within 5 business days when the 5% threshold is reached and within 10 days for the 10% threshold whiles the related company must be informed within 5 business days in every case. In Venezuela, the investor has to submit a report to the supervisory authority 5 working days prior to the initiation of a public offering so that the supervisory authority can define the terms of a tender offer, including the related publicity.

2.6 Requirements related to an acquisition and a disposal of shares

In most of the surveyed jurisdictions, the investor disclosure obligations are related to both the acquisition and the disposal of shares. However, in Egypt, Macedonia,

Mauritius, Nigeria, Oman, Pakistan, and Sri Lanka the investor only has to disclose the acquisition of shares.

In India reporting below the 15% of the votes threshold is to be done only for acquisitions. Beyond 15% but up to 75% both acquisition and disposal beyond 2% are to be reported.

2.7 The sanctions in case of failure to disclose shareholding in listed companies

The sanctions imposed in case of failure to disclose shareholding in listed companies vary considerably in the surveyed jurisdictions. Usually the sanction involves a substantial fine. In some jurisdictions this fine is associated with:

- (a) a suspension or a temporary disqualification from assuming managing responsibilities within a company and a prohibition to operate in the securities market (Brazil);
- (b) the clearing house will not transfer shares under the name of a sanctioned person, who will also be prevented from using his voting rights to nominate company directors (China);
- (c) if a considerable material gain has been realised or considerable damage occurs to a third party because of a related criminal offence, the offender is subjected to a fine representing at least 250 days of income or up to three years of imprisonment (Croatia);
- (d) the investor cannot exercise the voting rights attached to the securities acquired above the threshold which he had previously reported (Czech Republic – beyond that the investor must not contractually acquire further voting securities; Hungary – voting rights cannot be exercised until the notification obligation has been fulfilled; Former Yugoslav Republic of Macedonia – if the person holds a qualified shareholding without proper notification, he cannot exercise the related voting rights; Poland – exercising voting rights on shares acquired in violation of the disclosure requirements is null and void);
- (e) a transaction effected without appropriate notification is cancelled (Egypt): the automated trading and settlement system in the stock exchange does not allow the execution of a transaction that will result in increasing the shareholding of a person to more than 10% of nominal shares in the capital of a company without prior permission from the Capital Market Authority of Egypt;
- (f) the transaction contract is null and void when there is a failure to appropriately disclose the transaction (Philippines);
- (g) third-party damage can be sought from a person who has failed to appropriately disclose a transaction (Oman);
- (h) the acquirer and any person acting in concert shall not be entitled to stand as an acquirer for the next 3 years (Pakistan);
- (i) imprisonment of up to one year (South Korea), two years (Chinese Taipei), or five years (Turkey);

- (j) the acquiring investor will not be able to exercise the voting rights related to the shares bought in contravention to the law and all the decisions that may have been made through the use of the related voting rights will be null and void (Venezuela);
- (k) the shares bought without proper notification need to be sold (Vietnam).

2.8 The supervisory authority's ability to verify investors' shareholdings in listed companies

Most of the supervisory authorities in the surveyed jurisdictions are entitled to verify investors' shareholdings in listed companies through detailed record inspections. However, in Lithuania, Malta, Chinese Taipei and Vietnam the authorities are not allowed to check investors' shareholdings.

2.9 Regulation concerning capital groups and market participants acting in concert

Generally capital groups and market participants acting in concert are treated as one investor and are subject to the same requirements. This is not however the case in the Barbados, Malta, Nigeria and Oman.

3. Public company disclosure obligations

3.1 Informing a public company about an acquisition or a disposal of its shares

In most of the surveyed jurisdictions, public companies are informed about the acquisitions or disposals of their shares. The usual sources of this information are the investors, the media and the central securities depositories.

Turning to specific situations, in Bulgaria securities have been dematerialized and a central securities depository keeps shareholder records for companies for a monthly fee. Companies are presented three times a year with an updated list of their shareholders. In Nigeria the primary information source is a daily trading publication by the stock exchange. In South Korea shareholders are not required to report their shareholdings to the companies in which they hold shares. Public issuers only receive information regarding transactions in their shares through Internet-based disclosure reports required from persons who acquire or hold 5% or more of the voting shares. In Jordan and Thailand shareholding related information can be obtained from the government securities regulatory authorities. In Romania, in addition to the information provided by the investor, the issuer can always ask the register for a list of its shareholders. In Venezuela the target company is informed through a report that the investors send to the SEC and that are published by the stock exchange and by newspapers.

3.2 A public company's requirement to disclose investors' acquisitions and disposals of substantial blocks of its shares

In the surveyed jurisdictions the prevailing general rule is that a public company is obliged to inform the market that an investor has acquired or disposed of substantial blocks of its shares directly or through a stock exchange. A number of exceptions have however been identified. For example, in some jurisdictions the obligation to disclose such information is fulfilled only by the investor (Bulgaria, Oman). In the Czech Republic

the investor informs the competent authority and the company about an acquisition or disposal of a substantial block of shares and only the competent authority informs the market. Public companies with registered offices in the Czech Republic only have disclosure obligations when their shares are listed on another EU state stock exchange. In Venezuela there are not obligations from the company because investors are required to inform the SEC about their intentions to buy shares in advance.

3.3 The deadline for a public company to disclose investors' acquisitions and disposals of substantial blocks of its shares

A public company which receives from an investor information about his acquisition or disposal of the company's shares, generally has to disclose that information to the market within a few days.

Turning to specific cases, in Argentina, Brazil, Hungary, Jordan, Malaysia, Mauritius, Poland, Romania and Thailand the information must be disclosed by the company at the latest within one day. The longest deadline identified by the survey was in the Czech Republic where it was found to be of 9 days. This deadline however applies only in the rare case when a company's shares are listed on a stock exchange in another EU state and when that company has a registered office in the Czech Republic. Otherwise it is the investor who needs to inform the competent authority and the company about an acquisition or disposal of a substantial block of shares within three working days. The competent authority then informs the market.

3.4 Sanctions for a public company in case of failure to disclose information on an investor's acquisition of a substantial block of its shares

The survey identified three basic regulatory models in that regard. One where the company incurs the same penalty as that applied to the guilty investor: in Argentina, Brazil, Egypt, Hungary, Jordan, Pakistan, and Turkey. In another model, there is simply no sanction imposed on the guilty company: in Barbados, Bulgaria, South Korea, Malta, Mauritius, Oman, South Africa, and Venezuela. In a third model, a substantial fine can be imposed: in Croatia, the Czech Republic, India, Macedonia, Malaysia, Poland, Romania, Chinese Taipei, and Vietnam. It is to be noted that in China, although there are no related sanctions called for guilty companies in the securities law as such, the stock exchanges can reprimand the management of the company for a failure to disclose this type of information. In the Philippines, in addition to a fine, the trading and registration of the company shares can be suspended. In Sri Lanka the stock exchange can transfer the securities of the company to a default board, suspend trading or delist the company for such a disclosure failure. In Thailand the regulatory authorities can suspend the trading of a company's shares until the company discloses the needed information to the public.

4. Tender offers

4.1 The investor's obligation to announce a tender offer after exceeding a certain threshold of votes

The survey generally found that an investor is obliged to announce a tender offer if control over the company is changing, i.e. when the investor is able to exercise influence on the core business of the company. No specific regulation in that area however exists in Malta, Mauritius and Oman.

The survey has in particular enabled the identification of the following methods to define the obligation to announce a tender offer:

- 4.1.1 The most common situation is for the announcement of the tender offer to be required when an investor crosses an explicitly defined threshold of voting rights (in Argentina – 35%; Barbados, Croatia – 25%; China – 30%; Egypt – 5%; Nigeria – 33 1/3 %; Hungary - 33% which is to be approved by the supervisor in advance; Philippines - 35%; Jordan and Lithuania – 40%; Poland – 50%; Venezuela – 10% in case of significant share ownership⁴ and any acquisition percentage that allows majority control⁵);
- 4.1.2 The announcement of the tender offer is required when the investor acquires a small block of shares and has already crossed a substantial threshold or gained control over the company (Bulgaria – holding 50 % or more and acquiring more than 3%; Turkey – holding 25% or 50% of voting rights and acquiring 10% or more within one year; Malaysia – when the acquirer already holds more than 33% but less than 50% of the company shares, he is obliged to make a mandatory offer for the remaining shares when he acquires more than 2% of the company's issued and paid-up capital during any 6-month period);
- 4.1.3 The announcement of the tender offer is required when the investor acquires a large block of shares within a short period of time (South Korea – a shareholder is required to announce a tender offer when he holds 5% of the total number of votes as a result of the purchase of shares from more than 10 persons within 6 months; Poland – when the investor acquires 10% of shares with voting rights within 90 days).

4.2 The circumstances under which there is no obligation to announce a tender offer after exceeding a certain vote threshold

The survey has identified a number of interesting cases when there is no obligation to announce a tender offer after exceeding a certain threshold of votes. In particular:

- (a) whenever the change in control is the result of a company reorganization (Argentina);
- (b) when a company seeks to repurchase less than 10% of its shares (Barbados);
- (c) if the passing of the 50 % threshold is the result of a privatization transaction as stipulated by law (Bulgaria);
- (d) when an economic rescue scheme has been approved by the government at some specific conditions (China);
- (e) when an investor acquires threshold passing shares by inheritance, by a division of marital assets, through investments by private placement when the general assembly of shareholders agrees, in bankruptcy proceedings, through a change of the company's legal form, or when the issuer's general assembly of shareholders

⁴ See footnote 1.

⁵ See footnote 2.

grants approval by a majority of three-fourths, excluding the votes of the investor (Croatia);

- (f) when a person becomes the legal successor of an investor, provided that this investor had already fulfilled all his related tender offer disclosure information (Czech Republic);
- (g) when the number of company shareholders is less than 10 within a six-month period or when the purchase is made for retirement purpose from related persons or by the exercise of a shareholder's pre-emptive rights (South Korea);
- (h) in Lithuania the government securities regulator has the right to waive the tender offer disclosure obligations if it deems that the requirement to announce a tender offer would be unfair or contradictory to the market's interest;
- (i) when there are no more than 20 shareholders in a private company, or another number as may be prescribed by regulation, in order to purchase shares by way of agreement (Nigeria);
- (j) when shares are purchased from the unissued capital stock, provided that the acquisition will not result in reaching a threshold of 50% or more of the total share ownership by the purchaser; when a share purchase is made in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement whereby the acquisition is made by the debtor or creditor; when a share purchase is made in connection with a privatisation undertaken by the government (Philippines);
- (k) when in very specific circumstances a share purchase is made directly from the State Treasury (Poland);
- (l) when the government securities regulator considers that a company is in a difficult financial state and that an investor is rescuing the company from possible liquidation by effecting a stock purchase (South Africa);
- (m) when a company repurchases its shares (Thailand);
- (n) when an exemption is obtained from the government securities regulator in some specific cases, such as a financial bailout or a privatization program (Turkey).

4.3 The investor's ability to announce a tender offer to subscribe for the purchase of a part of the remaining shares

Generally the investor is required to announce a tender offer only for the purchase of all remaining shares. The Survey has however enabled the identification of some exceptions to this situation in particular in Malaysia and in Venezuela.

4.4 The requirement of collateral for a tender offer

Collateral is necessary to secure a tender offer in most jurisdictions (Hungary, Poland, Venezuela - 100%; China - 20%; Lithuania - 10%; Romania - 30%). In Barbados and Malaysia information attesting that the investor has enough resources to cover its bid is

obligatory. In the Czech Republic, such information is not required on a regular basis but can be imposed by SEC on a case by case basis.

4.5 Possibility of the withdrawing an announced tender offer

Generally, the initiator of a tender offer is not allowed to withdraw it. Some exceptions have been identified in particular in Argentina, Barbados, and Turkey where a bid can be conditional on a certain number of shares being deposited and where failure to reach that number entitles the bid initiator to withdraw its tender offer. In Poland the withdrawal of the tender offer is not allowed unless another investor announces a tender offer relating to the same shares. In Venezuela, a tender offer withdrawal is allowed when: 1) up to the first day of the offer, the offer is revocable anytime simply by duly notifying the SEC and the stock exchange; 2) from the 1st day to the 3rd day before the closing of the offer by duly notifying the SEC and when some specific conditions are met; 3) up to the operation's settlement, if there is a decision from an antitrust authority preventing the bid from being completed. Some jurisdictions explicitly allow the bid initiator to bonify the terms of its tender offer.

4.6 Setting the bid price in a tender offer

In general, the surveyed regulatory frameworks stipulate that the price offered for outstanding shares in a tender offer must be fair and equal for all the holders of shares in a given category. The following three methods for establishing the bid price in a tender offer were in particular identified:

- a) the offered share price must at least be equal to the average price of the target shares for a specific period of time (Barbados – the share market price at the moment of initiation of the tender offer; Vietnam – the closing price on the day before the offer is initiated; Argentina – the average share price during the previous semester; Venezuela – the average share price during the 6 month period preceding the bid);
- b) the bid price must at least be equal to the highest price paid for the same securities by the tender offer initiator within a specific period of time before the announcement of the tender offer (South Africa – 3 months; Thailand – 90 days; Turkey - 3 months; Macedonia, Malaysia – 6 months; Croatia, Lithuania, Sri Lanka – 12 months);
- c) a mixed system picking up the highest price from the two above mentioned methods (Egypt, Bulgaria, Czech Republic, Hungary, Romania, China, and Poland).

No bid price restrictions were identified in Korea, Mauritius, Nigeria, Oman, Chinese Taipei and Uruguay.

4.7 Requirements concerning the price paid by an investor after completeing the take-over and cases of unequal treatment of minority shareholders

In general, the surveyed regulatory regimes do not impose requirements on the price paid by an investor for shares after he has completed a take-over. However, it must be noted that:

- a) In Argentina the regulatory framework stipulates that the price paid for shares after the completion of a take over must be “fair”;
- b) in Brazil there are certain requirements concerning the price paid by the investor after he has completed a take over;
- c) in Bulgaria any person who acquires directly, through related persons or indirectly more than 90 percent of the votes at the general meeting of a public company shall be entitled to register a tender offer to buy the shares of the other shareholders. In addition, any person who acquires more than 90 percent of the votes of a public company is obliged to purchase the shares of each remaining shareholder on demand until a tender has been published, as well as 14 days after its closing date. The price paid in both cases is governed by the general principle that no unequal treatment of minority shareholders may occur;
- d) the Czech Republic regulatory framework provides a relatively long time limit to enable shareholders to exercise their rights to accept a take-over bid. During the time when the tender offer is binding, the initiator and persons acting in concert must not acquire or alienate options to the target company's participating securities, or conclude agreements on future contracts for alienation of the participating securities. The main objective of these rules is to ensure equal treatment for all shareholders, in particular minority shareholders, who have identical interchangeable securities. If shareholders want to sell their share after a take over bid has expired they can do so at market price;
- e) in Egypt the securities regulator (SEC) has the power to suspend a company's general assembly resolutions if they are determined to unfairly favour a certain group of shareholders.
- f) in India if an investor who has completed a public offer seeks to acquire further shares, he cannot acquire them at a price higher than the offer price for the next 6 months;
- g) in Lithuania if a person who has completed a tender offer subsequently acquires the targeted securities at a price higher than the price offer during the following 12 months, he must pay the price difference to the persons who had accepted the tender offer;
- h) in Sri Lanka the price that should be paid to a shareholder when a mandatory offer is made shall be a price not less than the highest price paid by the investor and persons acting in concert with him, for shares of that class within the preceding twelve months;
- i) in Chinese Taipei the price paid immediately after the take over cannot differ from the price offered during the take over bid;
- j) in Thailand the price paid during a 6 month period after the tender offer must not be higher than the price mentioned in the offer document;
- k) in Venezuela the bid initiator must include in a report submitted to the SEC a statement addressed to any person, who has sold shares equivalent to more than 2% of the company's capital within a 6 month period before the offer's initial date,

to say that the initiator offers to pay the difference between the price the stockholder sold his shares and the price offered in accordance to the offer.

5. Why is it necessary to regulate take over bids and what related experience has been acquired

5.1 The rationale behind the introduction of regulation

The Survey has enabled the identification of a number of reasons for the introduction of takeover regulation. In particular:

- a) In Pakistan the takeover regulation was put in place to ensure fair and equal treatment to all the shareholders as well as a transparent and efficient system for making substantial acquisition of voting shares and take-overs of listed companies.
- b) In Egypt the disclosure by any person who wishes to conclude a transaction resulting in an increase in his shareholding over the 10% threshold of nominal shares of the capital of a company is aimed at informing the small shareholders about this material event, which may affect the price of their shares as well as the company's management. This information will help the small shareholder to decide what he wants to do with his stockholding.
- c) In Jordan, the rationale behind takeover regulation is to provide fair and equal treatment to all investors, and enhance market transparency by disclosing all the relevant information arising from substantial holdings or acquisition of listed company shares.
- d) In Turkey, the purpose of the regulation is to ensure a fair and transparent functioning of the capital market by giving timely information to the investors, shareholders, and other related parties. The key principle is that material information that may impact the investment decisions of investors and the prices of capital market instruments must be disclosed. Changes in the capital structure and control of public corporations are one of the material events that require public disclosure. An important purpose of takeover regulation is to give the shareholder the right to divest his company stock (at more favorable prices) if he does not want a new controller for the corporation for which he holds shares.
- e) In Lithuania the SEC has the right to establish general cases of exceptions from the obligation to announce a mandatory tender offer if the requirement to announce a tender offer would be unfair, inexpedient or contradictory to the market interests.
- f) In Sri Lanka, the rationale underlying the takeover and mergers code is the creation of a system of rules which will have the capacity to promote and support takeovers without undermining the rights of shareholders, however minor their stake in a company may be. A specific process, including timely compliance which is most often mandatory, has been set up to enable equal and even access to information which would be material to shareholders of a target company and other interested parties, including those interested in making competing offers for the target company.

g) In India, the takeover regulatory framework makes the process of acquiring shares through takeovers transparent, and protects investors' interests by introducing an element of equity between the various parties involved. The principles that lay behind the regulation are as follows:

- Equality of treatment and opportunities to all shareholders.
- Protection of interests of shareholders.
- Fair and truthful disclosure of all material information by the initiator in all public announcements and offer documents.
- No information to be furnished by the initiator and other parties to an offer exclusively to any one group of shareholders.
- Availability of sufficient time to shareholders for making informed decisions.
- An offer to be announced only after most careful and responsible consideration.
- The acquirer and all other intermediaries professionally involved in the offer, to exercise highest standards of care and accuracy in preparing offer documents.
- Recognition by all persons connected with the process of substantial acquisition of shares that there are bound to be limitations on their freedom of action and on the manner in which the pursuit of their interests can be carried out during the offer period.
- All parties to an offer to refrain from creating a false market in securities of the target company.
- No action to be taken by the target company to frustrate an offer without the approval of the shareholders.

h) In South Africa the takeover regulation aims at protecting minority shareholders and include among others, the following objectives:

- Equality of treatment of all shareholders during a takeover.
- Full or detailed and timely disclosures relating to takeovers.
- Avoidance of misleading information during takeovers.
- Avoidance of creation of false markets during takeovers.
- Information provided to minority shareholders to be of highest standards and accurate.
- Avoidance of conflict of interests by company directors during takeovers.
- Oppression of minority shareholders not allowed and change of control to be exercised in good faith.

5.2 Experience acquired in enforcing takeover regulations

In Pakistan, the related legislation was approved in 2002. Since then the market has witnessed 13 cases of takeovers/acquisitions. A conclusion has now been reached that some additional specific guidelines need to be formulated, in particular with respect to the contents of the information that needs to be publicly disclosed and the nature of the security to should be provided by the initiator to meet its obligations.

In Egypt, if a person offers to buy more than 10% of the shares of a listed company in one transaction without following the take-over regulations, the stock exchange will not allow this transaction to be executed. If a person executes a transaction that results in his ownership exceeding over 10% of the company shares in violation to take-over

regulations, the transaction will be settled in the clearance and settlement house. Any seller (third party) will then receive money for his shares but the violator will have to sell any shares he bought in violation of the law. So, there is no harm on the third party. It has been found that sometimes the price of the stock is high because of the takeover premium and the prices levels of the daily transactions tend to go up to be equivalent to the price of the bid. If the main stockholder(s) does not respond to the bid, the prices generally go back to the price level existing before the bid. It has also been found that if the initiator's bid is about 51% of the target firm and some stock is state-owned, the bidder has a tendency to take all the stock held by the state but just a fraction of the stock owned by the private sector. It has also been found that the bidder makes an offer for 75% or more of the issued shares of the target company, the company's stock tends to be illiquid on the market.

In Turkey, during the 1997-2005 period the government securities regulator approved approximately 30 mandatory tender offers. Within the same period approximately 120 exemptions for the mandatory tender offer regime were also approved. This suggests that in the Turkish capital market, the acquisition of shares and voting rights of certain companies usually takes place through an exemption regime for specific reasons. The regulations regarding exemptions for the mandatory tender regime have been found not to generally cause any distortion to the market place. Some price distortion has however been occasionally observed to result along with a number of other difficulties. A related study is currently being made by the regulator with a view to eliminating any potential disadvantage for small shareholders.

In Vietnam, the securities market is relatively new and its activities are still undeveloped. No takeover operation has yet been experienced but the currently existing takeover regulatory framework has been found to be overly complex.

In Sri Lanka the regulator has experienced difficulties in taking effective action to ensure compliance. One frequent issue arises where shares of a listed company are held indirectly through the holding of an unlisted company. The current securities regulatory framework only covers take overs that involve a listed company. This has been interpreted as excluding any indirect takeovers. This is a serious lacuna and is proposed to be remedied. The other significant concern has been the lack of administrative actions such as the imposition of fines, withholding of voting rights etc., which could be taken against a defaulting party. Under the current securities law the securities regulator is required to prosecute the defaulting party. The introduction of administrative action is envisaged to constitute an intermediate step to be taken as an alternative to prosecution, which is expensive and time consuming. This is also proposed to be shortly remedied through legislative amendments.

In South Africa the enforcement of the takeover regulation has been generally successful. Since the promulgation of the legislation creating the Securities Regulation Panel in 1989, the Panel only had to resort to the courts once during 2003. The matter is still pending before the courts. However, the Panel has considered it imperative that its regulations keep pace with changes in the local and global markets. To this end the Panel seeks to adopt the best practices from all over the world. It has already started a process of redrafting its regulations to keep up with these changes.

6. Issues to be addressed

6.1 The problems faced in enforcement of take over regulations

The usual problems encountered by the authorities of the surveyed jurisdictions with respect to the enforcement of takeover regulations are the following: market regulations compliance, evidence of acting in concert, inadequacy of existing regulations, insufficient investor education on takeover matter, involvement of off-shore companies. The following is a list of specific issues identified in some jurisdictions:

- (a) a division between investors holding tradable and non-tradable shares (China);
- (b) the determination of the adequate price (the Czech Republic);
- (c) shareholders represented by nominees (Hungary);
- (d) inadequacy of penalties for non-compliance (India);
- (e) take overs by investment funds and foreigners (Korea);
- (f) the definition of “control” (Malaysia);
- (g) cross border problems when the initiator is a foreign investor (Nigeria);
- (h) timing issues (Philippines);
- (i) counter-offers for the same securities (Romania);
- (j) poor notification of take-over activities and lack of flexibility in takeover regulation (South Africa);
- (k) identifying capital groups (Chinese Taipei);
- (l) the amount of information that can be requested from an investor in order to keep the market fully informed (Venezuela).

6.2 Organizing an educational seminar on takeovers

Most of the surveyed EMC members indicated that they viewed favourably the organization of an educational seminar on takeovers. Some of the issues that could be covered are:

- (a) evidence of acting in concert;
- (b) identification of acting in concert with off-shore companies;
- (c) determination of the lowest takeover price;
- (d) improving regulation;
- (e) hostile public offers;
- (f) competing offers;
- (g) sanctions;
- (h) international cooperation on tender offers;
- (i) protection of minority shareholders;
- (j) prevention of insider trading;
- (k) enforcement strategies;
- (l) mergers;
- (m) case studies;
- (n) specialized staff training on takeovers;
- (o) reverse takeovers;
- (p) role of the management of the target company;
- (q) the advantages of regulating takeovers;
- (r) comparing different regulatory regimes.

Conclusion

The analysis presented in this report is based on a detailed survey of a number of EMC members. It clearly shows that there are some broad similarities in many of the surveyed existing takeover regulatory regimes. At the same time, unique regulatory solutions for specific takeover related issues have been developed in several jurisdictions. This report summarily describes some of them in its Part I with more related information available through the detailed responses provided by the responding EMC members in Part II. This report therefore constitutes a useful reference for any securities regulator thinking about initiating a review of its existing takeover regulatory regime. Most of the surveyed EMC members indicated that they would view favourably the eventual organization of an educational seminar on takeovers.

Part II

COMPILATION OF RESPONSES TO THE SURVEY

Albania

| Jurisdiction | Name of authority |
|--------------|--------------------------------|
| ALBANIA | ALBANIAN SECURITIES COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

Albanian Securities Commission (ASC), Tirana Stock Exchange (TSE)

What regulations address the problem of takeovers?

X laws issued by President/Parliament
 X implementing regulations issued by ASC
 X self-regulation issued by the market
 articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Article 8, 9, 90 of the Rule “On Takeovers” | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---------------------------------------|
| shares X votes |
| Comments, if any |
| Reference in the law: the Company Law |

What are disclosure thresholds?
(e.g. 5%, 10%)

5%

Reference in the law: Article 65 of the ASC's Rule on Takeovers

Whom the investor is obliged to inform and when?

☒ supervisory authority

☒ exchange

news agency

a company

☒ other: Center of Shares' Registration

Deadline immediately

Deadline _____

Deadline _____

Deadline _____

Deadline _____

Comments, if any

Reference in the law: Article 64, 65 of ASC's Rule "On Takeovers"

Are the requirements related to acquisition or to disposal of shares?

acquisition

disposal

☒ both

Comments, if any

Reference in the law: Article 64, 65, 90 of ASC's Rule on Takeovers

What is the sanction in case of failure to disclose shareholding in listed companies?

A person who contravenes any provision of this Law commits an offence and is liable on conviction -

in the case of a person not being a company, a fine of 30,000 to 1,000,000 leks; *

in the case of a company, a fine of 50,000 - 5,000,000 leks. *

Reference in the law: Article 63, 64 of the law "On Securities"

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| Reference in the law: Chapter 10 of the law "On Securities" | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| |
| Reference in the law: Articles 81- 89 of ASC's Rule on Takeovers |

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any: If the process happens in the Stock exchange, a public company may receive the information. | |
| Reference in the law: ASC's Rule on Takeovers | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Prospectus; Announcement in newspapers from the company, TSE |
| Reference in the law |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> market <input checked="" type="checkbox"/> investors other | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) | |
| Reference in the law: Article 8, 9, 90 ASC's Rule "On Takeovers" | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|---|
| Not later than 9.00 a.m. on the dealing day following the date of the acquisition or disposal |
| Reference in the law: Article 90 of ASC's Rule on Takeovers |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|---|
| |
| Reference in the law: Article 63, 64 of the Law "On Securities" |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investors or to the fact that the investor holds specified number of shares/votes).</i> 20%</p> | |
| Reference in the law: Article 90 of ASC's Rule on Takeovers | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|----------------------|
| It is not regulated |
| Reference in the law |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|-----------------------|
| It is not regulated |
| Reference in the law: |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|---------------------------------------|----|
| Yes <input type="checkbox"/> | No |
| Comments, if any: It is not regulated | |
| Reference in the law | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Article 79 of ASC's Rule on Takeovers | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|--|
| |
| Reference in the law : Article 79 of the ASC's Rule on Takeovers |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Article 68 of the ASC's Rule on Takeovers | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? | |
| Reference in the law: Article 68 of the ASC's Rule on Takeovers | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Article 68 of the ASC's Rule on Takeovers | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any: 6 months' period | |
| Reference in the law: Article 80 of the ASC's Rule on Takeovers | |

What kind of problems do you face in enforcement of takeovers regulations?

It is not tested in practice

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? All the related issues | |

Argentina

| Jurisdiction | Name of authority |
|--------------|---------------------------------|
| ARGENTINA | ARGENTINE SECURITIES COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

The Argentine Securities Commission

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Reference in the law: Decree 677/01 and Title XXI of the Rules and Regulations of the Argentine Securities Commission. | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| votes |
| Reference in the law: Decree 677/01 and Title XXI of the Rules and Regulations of the Commission. |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| Disclosure must take place whenever the shares represent at least 5% of the votes needed to make corporate decisions at shareholders' meetings. |
| Reference in the law: Decree 677/01 and Title XXI of the Rules and Regulations of the Commission. |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority exchange | Deadline: immediately Deadline: immediately |
| Comments, if any: The information is normally published by the SRO, thus becoming disclosed to the public in general. | |
| Reference in the law: Decree 677/01 and Title XXI of the Rules and Regulations of the Commission. | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Reference in the law: Decree 677/01 and Title XXI of the Rules and Regulations of the Commission. |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| As a result of administrative proceedings, the following sanctions may be imposed: warning, fine, inability of up to 5 years to become a corporate officer, suspension of up to 2 years to publicly offer securities or prohibition to publicly offer securities. |
| Reference in the law : section 10 Law 17811 (on Public Offering) |

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|---|--|
| Yes | |
| Reference in the law: Law 17811 (on Public Offering). | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|---|
| People acting in concert, the same as any investor, should inform acquisition or disposal of shares of a public company which affect shareholdings. If the threshold of 35% is surpassed, a tender offer should take place. |
| Reference in the law: sections 2, 5 and 23 of Decree 677/01. |

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|--|
| Yes | |
| Comments, if any : Self – regulatory organisations are informed, the information is published and therefore the public in general are informed | |
| Reference in the law Sections 5 and 6 of Decree 677/01 | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Publication in the SRO bulletin or in a major newspaper. |
| Reference in the law Section 6 of Decree 677/01 and Title XXI of the Rules and Regulations of the Commission |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| Yes supervisory authority market | |
| Comments, if any (is there any special procedure for providing such information) Investors are informed through publication | |
| Reference in the law Section 6 of Decree 677/01 and Title XXI of the Rules and Regulations of the Commission | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

| |
|---|
| Immediately after the acquisition takes place |
| Reference in the law Decree 677/01 and Title XXI of the Rules and Regulations of the Commission. |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|---|
| As a result of administrative proceedings, the following sanctions may be imposed: warning, fine, inability of up to 5 years to be corporate officer, suspension of up to 2 years to publicly offer securities or prohibition to publicly offer securities. |
| Reference in the law Section 10 of Law 17811 |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>The threshold is 35%</p> | |
| Reference in the law: section 23 of Decree 677/01 and section 3, Title XXVII of the 2001 Rules and Regulations of the Commission (as amended by General Resolution 401) | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| Whenever the change in control is a result of company reorganisation or of an acquisition of securities which imply a redistribution of securities among companies belonging to the same economic group, or whenever the company involved has included in its by-laws a provision stating that the company has not adopted the system that mandates that a tender offer must take place whenever control is to be gained. |
| Reference in the law : section 5, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401) |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|--|
| The investor is required to announce a tender offer for the sale of all the remaining shares. |
| Reference in the law : section 25 et seq. Decree 677/01 and section 2, Title XXVII, Rules and Regulations of the Commission (as amended by General Resolution 401) |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| Yes | |
| Reference in the law: sections 30/32, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes | |
| Comments, if any: Withdrawal is allowed only in certain cases specified in Title XXVII of the Rules and Regulations of the Commission. | |
| Reference in the law Section 51, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|---|--|
| Changes must be submitted to the Commission for approval at least 7 days prior to the expiration of the term for acceptance and must imply more favorable conditions to all offerees. Unless otherwise stated, it is understood that prior offerees accept the new offer. | |
| Reference in the law section 40 et seq., Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Reference in the law: Decree 677/01 and Title XXVII of the Rules and Regulations (as amended by General Resolution 401) | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| If yes, how it is defined <i>(e.g. an average market price for a given period before the announcement)</i> ? The price must be “fair”, and may be established according to the criteria set forth in section 24, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401) among others, but may not be lower than the average market price during the previous semester. | |
| Reference in the law Section 24 et seq., Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| |
|--|
| No |
| Comments, if any: The price is established by the offeror with the following exceptions: a) when the buyer has acquired securities 90 running days prior to the date the offer is made, the price may not be lower than the highest price paid by the buyer; b) when the buyer has obtained a firm commitment to sell by the controlling shareholder or other shareholders with a right to participate in the tender offer, the price may not be lower than that set in that commitment. |
| Reference in the law Section 20, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| |
|---|
| Yes |
| Comments, if any The price must be “fair” and may be established according to the criteria set forth in section 24, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401) among others |
| Reference in the law Section 24, Title XXVII of the Rules and Regulations of the Commission (as amended by General Resolution 401). |

What kind of problems do you face in enforcement of takeovers regulations?

Due to our limited experience on takeovers, we cannot provide any assessments on the matter.

Barbados

| Jurisdiction | Name of authority |
|--------------|-----------------------|
| BARBADOS | SECURITIES COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

The Securities Commission has responsibility for the regulatory oversight of take-overs in Barbados. Under Section 5(1)(f) of the Securities Act 2001-13 the Commission is empowered to ‘regulate, approve and review take-overs in all cases in which it considers it expedient or appropriate as they relate to public companies.’

Additionally, Sections 126 (2) & (4) provide for the Minister to make regulations on the recommendation of the Commission, governing take-overs in respect of public companies including regulations which prescribe the level of acquisition or voting rights by a person or persons beyond which an offer to all shareholders of the relevant shares becomes mandatory, the conditions to govern such circumstances and disclosure requirements of offeror and offeree.

The Take-Over Bid Regulations 2002 identify the Securities Commission as regulator for the purpose of the enforcement of the regulations.

Note that the Commission has recently created a Committee to review securities legislation in Barbados, including the regulation of take-overs. The Committee’s report may result in changes to some of the current provisions referred to in this questionnaire.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC
self-regulation issued by the market
articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any <i>Under the provisions of Regulation 4 of the Take Over Bid Regulations 2002, a person who directly or indirectly acquires 25% or more of the equity of a company must notify the Commission and the company of inter alia, the identity of the acquirer and a declaration as to the future intentions of the acquirer.</i> <i>In addition, under Regulation 20, a shareholder who owns 10% or more of the shares in a listed company shall declare every trade to the Exchange within 1 week.</i> | |
| Reference in the law <i>Regulation 4(2) of the Take Over Bid Regulations 2002</i> <i>Regulation 20 of the Take Over Bid Regulations 2002</i> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| shares |
| votes |
| Comments, if any <i>The regulation refers to 25% of the equity in the company.</i> |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|--|
| 25% of the equity 10% of shares of a listed company |
|--|

Whom the investor is obliged to inform and when?

| | |
|--|---|
| supervisory authority exchange the company | Deadline <i>_(for 25%) 24 hours</i> Deadline <i>_(for 10%) 1 week</i> Deadline <i>_(for 25%) 24 hours</i> |
| Comments, if any <i>Although the law only requires the Commission to be notified (in the case of the 25% trigger) and the Exchange to be notified (in the case of the 10% shareholding) in either circumstance, the local practice has been to inform BOTH entities. This is a matter which will be considered as part of the review being undertaken and which is alluded to under question 1.</i> | |
| Reference in the law <i>Regulation 4(2) of TOBR 2002</i> <i>Regulation 20 of TOBR 2002</i> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| acquisition disposal |
| <p>Comments, if any</p> <p><i>The requirement to notify the exchange within 1 week for shareholders who hold 10% or more is related to every trade, which could be either an acquisition or disposal; The requirement relative to 25% relates to acquisition only.</i></p> |
| <p>Reference in the law</p> <p><i>Regulation 4(2) of TOBR 2002</i> <i>Regulation 20 of TOBR 2002</i></p> |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| <p><i>There do not appear to be specific sanctions attached to the failure to disclose. However, Section 142 of the Securities Act provides that a person who knowingly or recklessly contravenes a provision of the Act or any regulation is guilty of an offence and is punishable on summary conviction by a fine of \$50,000.00 or imprisonment for 1 year or both.</i></p> |
| <p>Reference in the law</p> <p><i>Section 142 (2) of the Securities Act 2001-13</i></p> |

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|---|--|
| Yes | |
| <p>Comments, if any (what would be the procedure for verification of such shareholding)</p> <p><i>The Commission is empowered to require registered brokers to disclose the name of the person with or through whom the security was traded. This can be used to verify shareholding. (Sect. 86 of SA)</i></p> <p><i>The Commission also has a general power to 'undertake such other activities as are necessary or expedient for giving full effect to the Act..... and to do all such other things which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act...' (Section 5(1)(i) and (j) of SA)</i></p> <p><i>There is no specified procedure to be followed.</i></p> | |
| <p>Reference in the law</p> <p><i>Section 86 of the Securities Act 2001-13</i> <i>Section 5 of the Securities Act 2001-13</i></p> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal as to the company which shares are acquired*)?

None legislated. However, the Commission is required to cooperate with the Central Bank or any other agency (including the Fair Trading Commission) that exercises regulatory authority under any enactment over a financial institution, insurance company or other body. This would include cooperating with the Fair Trading Commission in instances where the Commission is investigating possible market abuses, infringement on fair competition and monopolistic practices in the case of a merger or take-over.

Reference in the law

Section 11 of the Securities Act 2001-13

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|--|
| Yes | |
| Comments, if any | |
| <i>Public companies may require investors to declare interest and the nature of the interest in the company.</i> | |
| Reference in the law | |
| <i>Section 117 of SA</i> | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The company's initial and most easily accessed source is the trading report published in the daily newspapers. The issuer may then seek information as to the ownership of shares traded from the Barbados Central Securities Depository Inc.

The Barbados Central Securities Depository Inc is obliged to permit issuers who are members to inspect the records at no charge to determine shareholdings at any particular date. Beneficial owners may also do this and any other person may do so upon payment of a specified fee.

Under Section 117 of the Act, the issuer could then also seek details from the investor who has acquired the shares.

Reference in the law

*Sections 109 and 110 of the Securities Act, 2001-13
Section 117 of the Securities Act, 2001-13*

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|--|
| Yes supervisory authority | |
| Comments, if any (is there any special procedure for providing such information) <i>Only where the 25% or 10% triggers referred to above are attained.</i> | |
| Reference in the law <i>Regulation 4(2) of TOBR 2002</i> <i>Regulation 20 of TOBR 2002</i> | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

This question needs further clarification

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

There are no specific sanctions save the general sanctions for breach of the Act or Regulations already referred to.

Reference in the law

Section 142(2) of SA

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>The threshold is 25% and the investor is required to announce a tender offer when he exceeds this threshold. Regulations do not refer to the manner of the acquisition of the 25% shareholding except to say where the investor acquires the 25% 'directly or indirectly' suggesting that the trigger is applicable even where the 25% is acquired through actions external to the investor.</i> | |
| Reference in the law <i>Regulation 4 TOBR 2002</i> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Where a company seeks to repurchase 10% or less of its own shares.

Reference in the law

Regulation 16(3) of TOBR 2002

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

The investor is required to announce a tender offer for all of remaining shares once 25% trigger is reached and he has declared an intention to attain majority shareholding.

Reference in the law

Regulation 4(3) of TOBR 2002

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

No

Comments, if any

The investor is not required to deposit money or other collateral. However, where all or part of the consideration for the security is money, the investor has to include in the take-over bid circular, information as to the arrangements that the offeror has made to ensure that the required funding are available to take up and pay for the shares of the offeree company deposited pursuant to the take-over bid. Where all or part of the consideration for the take-over bid is securities of the the offeror, the take-over bid circular must contain financial statements of the offeror on a pro-forma basis as of the date of the offeror's financial statement giving effect to the take-over bid based on the information in the most recent publicly filed financial statements of the offeree company

Reference in the law

Regulation 7(i) of TOBR 2002

Regulation 8(a) of TOBR 2002

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes | |
| Comments, if any <i>The take-over bid can be conditional on a certain number of shares being deposited, in which case that condition has to be stated in the circular. Failure to deposit that amount of shares entitles the offeror to withdraw.</i> <i>The law allows withdrawal where a) a specified number of shares outstanding and not already owned by the offeror are not tendered, b) Government or a Government agency moves to prevent the take-over from proceeding or to alter the status of the offeree company materially or c) cases of natural disaster or intervention of the directors of the offeree company between the making of the offer and the closing date to materially change the value or nature of the offeree company.</i> | |
| Reference in the law <i>Regulation 12 of TOBR 2002</i> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|---|--|
| <i>There are no conditions under which changes to the take-over bid must be made but after the bid has been changed, the closing date of the offer must be extended by 14 days. The price at acquisition of the 25% is the lowest that the bid can be made at. The offer to other shareholders has to be at that (listed) price, a better price or for other equal or better consideration.</i> | |
| Reference in the law <i>Regulation 6(2) of TOBR 2002</i> <i>Regulation 4(3) of TOBR 2002</i> | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|--|
| Yes | |
| Comments, if any <i>Any offer made has to be made to all relevant shareholders.</i> | |
| Reference in the law <i>Regulation 4 of TOBR 2002</i> | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| If yes, how it is defined (e.g. an average market price for a given period before the announcement)? | |
| <i>The minimum price than can be offered by an offeror is the listed price of the shares at the time of trigger of the take-over bid provisions.</i> | |
| Reference in the law | |
| <i>Regulation 4(3) of TOBR</i> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (e.g. over the last 12 months)?

| | |
|---|--|
| Yes | |
| Comments, if any | |
| <i>Theoretically, it can be, if the listed price of the shares has gone below the price paid by a previous offeror on a take-over. There is no legislative provision to the contrary. However, in practice, the listed price after the close of a take-over bid increases (where applicable) to the price per share offered on take-over. On subsequent take-over, then, the listed price would normally be the price paid on a previous take-over or higher.</i> | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| |
|----------------------------|
| Comments, if any |
| <i>See previous answer</i> |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---|
| <i>Some problems faced are:-</i> |
| <i>Market compliance especially relating to disclosure requirements on a take-over;</i> |
| <i>The necessity for expansion of the existing regulations;</i> |
| <i>Education of investors on the matter of take-overs.</i> |

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| If yes, what kind of issues should be presented? | |
| <i>Issues related to previous answer.</i> | |

Bolivia

| Jurisdiction | Name of authority |
|--------------|---|
| BOLIVIA | PENSION, SECURITIES AND INSURANCE SUPERINTENDENCE |

Which authority is responsible for takeovers in your jurisdiction?

The Pension, Securities and Insurance Superintendence is responsible for takeovers in Bolivia.

What regulations address the problem of takeovers?

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Investor disclosure obligations

(Obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| |
|--|
| Comments, if any Any significant change in the ownership of a company must be informed as an Issuer's Disclosure. |
| Reference in the law THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What are disclosure thresholds?
(e.g. 5%, 10%)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Whom the investor is obliged to inform and when?

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Are the requirements related to acquisition or to disposal of shares?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What is the sanction in case of failure to disclose shareholding in listed companies?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Public company disclosure obligations

(Disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Reference in the law
THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

How is the price in a tender offer established?

Does it have to be equal for all investors?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Is there a minimum price?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Are there any requirements concerning the price paid by the investor after the take over? *(e.g. can the price paid immediately after the take over differ from the price offered in the take over process)*

Reference in the law

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

What kind of problems do you face in enforcement of takeovers regulations?

THERE IS NOT A SPECIFIC PUBLIC TRADING OF TAKEOVERS LAW IN BOLIVIA

Do you think a seminar on takeovers should be organized?

Yes

If yes, what kind of issues should be presented?

The issued that should be presented are:

Hostile Public Offers

Competitor Offers

Percentage of when you should do a Tender Offer

Sanction on acquisitions out off a Tender Offer

Brazil

| Jurisdiction | Name of authority |
|--------------|---|
| BRAZIL | COMISSÃO DE VALORES MOBILIÁRIOS (“CVM”) |

Which authority is responsible for takeovers in your jurisdiction?

The authority responsible for regulating takeovers in Brazil is the CVM.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any | |
| Any material events such as any decisions by majority shareholders, general shareholders’ meetings, or by officers of publicly-held companies, as well as any other acts or facts of a political-administrative, technical, business or financial nature related to the relevant business that may significantly influence the market price of the securities issued by the relevant corporation or backed on them, investors’ decisions as to buy, sell, or preserve those securities, and investors’ decision as to exercise any rights inherent to titleholders of securities issued by the by the relevant corporation or backed on them, must be disclosed | |
| Reference in the law | |
| Article 157 of Law 6404/76 (Corporation Act), regulated by CVM Instruction 358 in its articles 2 and 12. | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| shares votes |
| Comments, if any |
| They are both material event and thus must be disclosed. |
| Reference in the law |
| Article 10 and 12 of CVM Instruction 358 |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|--|
| Direct or indirect controlling shareholders and shareholders who elect members of the administrative council or the audit committee, as well as any individual, legal entity, or group of persons, jointly acting or representing a common interest, reaching a direct or indirect participation that corresponds to 5% (five per cent) or more of sort or type of representative shares of the publicly-held capital is required to observe disclosure obligations. |
| Reference in the law Article 12 of CVM Instruction 358 |

Whom the investor is obliged to inform and when?

| | |
|--|---|
| supervisory authority exchange news agency | Deadline <u>immediately</u> Deadline <u>immediately</u> Deadline <u>immediately</u> |
| Comments, if any It is the duty of a Director of Relations with Investors to make public and inform the Comissão de Valores Mobiliários and also the stock exchange and entities of the organized over-the-counter market where the securities issued by the company are traded, as the case may be, as well as any material events occurred or related to their business, as well as to provide for their wide simultaneous publicity, to all markets in which such securities are traded. | |
| Reference in the law Article 3 and paragraph 3 of Article 12, both of CVM Instruction 358. | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Reference in the law Paragraph 4 of Article 12 of CVM Instruction 358. |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| Any breach of Instruction 358 (disclosure of material events) is a severe violation and shall be sanctioned according to Paragraph 3 of Article 11 of Law 6385/76 (Securities Act). Sanctions for severe violation include (a) suspension from duties of a director or member of the fiscal council of a public company, from an entity taking part of the distribution system, or from other bodies which require authorization by, or registration with, the CVM; (b) temporary disqualification, up to a maximum period of 20 years, from occupying the posts mentioned in the previous item; (c) suspension of the authorization or registration for the execution of the activities covered by this law; (d) cancelation of the registration or of the authorization to carry out the activities covered by this law; (e) temporary prohibition, up to a maximum period of 20 years, from practising certain activities or transactions, to the entities that is part of the distribution system or other entities that depend on authorization by, or registration with, the <i>Comissão de Valores Mobiliários</i> ; temporary prohibition, for a maximum period of 10 years, to operate, directly or indirectly, in one or more types of transaction in the securities market. |
| Reference in the law Article 18 of CVM Instruction 358 and Paragraph 3 of Article 11 of Law 6385/76 (Securities Act). |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| |
|--|
| Yes |
| Comments, if any (what would be the procedure for verification of such shareholding) The CVM may examine and extract examples books or documents, including electronic programs, magnetic and optical files. In addition to the books required of all commercial firms and subject to the same legal formalities, a corporation shall keep a Registered Shares Register book, for recording, noting or registering: (a) shareholders' names and the number of their shares; (b) initial payments or installments to pay up capital; (c) conversions of shares from onetype or class to another; (d) redemptions, refunds and amortizations of shares, or their acquisition by the corporation; (e) changes resulting from the disposal of or transfer of shares; and (f) pledges, usufructs, trusts, fiduciary alienations in guarantee, or any charge which encumbers the shares or prevents their sale. Shall also keep a Registered Shares Transfer book for recording transfers, which must be signed by the assignor and the assignee, or their authorized representatives and a Registered Founder Shares Register and a Registered Founder Shares Transfer book, should such certificates have been issued, subject, in both cases, where applicable, to the provisions of items I and II of this article. Any person may obtain certified copies of the entries made in the books mentioned in items I to III, as long as it be necessary to the defense of his rights or the elucidation of his personal interest or the interest of any shareholder or the capital market, being the corporation authorized to make a charge for the cost of such copies; the denial of such request shall be subject to appeal to the CVM. |
| Reference in the law Item I of Article 9 of Law 6385/76 (Securities Act); Article 100 of Law 6404/76 (Corporation Act); Articles 16 and 17 of CVM Instruction 202. |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|---|
| Regulation addresses for shareholder's agreement. |
|---|

| |
|---|
| Reference in the law Article 118 of Law 6404/76 (Corporation Act). |
|---|

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|-----|--|
| Yes | |
|-----|--|

| |
|--|
| Comments, if any The Corporation Act does not distinguish disclosure obligations of investors from those of public companies. |
|--|

| |
|--|
| Reference in the law Article 157 of Law 6404/76 (Corporation Act), regulated by CVM Instruction 358 in its articles 2 and 12. |
|--|

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|------------------|
| By the investor. |
|------------------|

| |
|---|
| Reference in the law Article 157 of Law 6404/76 (Corporation Act), regulated by CVM Instruction 358 in its article 12. |
|---|

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| |
|--|
| Yes supervisory authority market |
|--|

| |
|--|
| Reference in the law Article 3 and paragraph 3 of Article 12, both of CVM Instruction 358 |
|--|

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(*e.g. what is the deadline of informing supervisory body and/or the market about acquisition?*)

When reaching a direct or indirect participation that corresponds to 5% (five per cent) or more of sort or type of representative shares of the publicly-held capital, a company shall send to CVM and, if it is the case, to the Stock Exchange and entities of the organized over-the-counter market in which the securities issued by the company are listed, as well as make public, a declaration immediately after the above mentioned 5% is reached.

Reference in the law

Article 12 and its Paragraph 3, both of CVM Instruction 358.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Same as applied to investor.

Reference in the law

Article 18 of CVM Instruction 358 and Paragraph 3 of Article 11 of Law 6385/76 (Securities Act).

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?
(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

If the majority shareholder or the controlling corporation acquires shares of a publicly-held corporation under its control, and these shares directly or indirectly increase their interest in a certain class of shares in a way that hinders the market liquidity of the remaining shares, they shall be required to make a public offering for the acquisition of all shares remaining in the market, according to the general rules issued by The Brazilian Securities Commission. The OPA for increase of participation should be performed whenever the controlling shareholder, the person entailed to him, and other people which actuate together with the controlling shareholder or person entailed to him, acquire, by other means different from an OPA, shares which represent more than a 1/3 (one third) of the total shares of each type or class circulating on the date of validity of this Instruction

Reference in the law

Paragraph 6 of Article 4 of Law 6404/76; Article 26 of CVM Instruction 361.

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|--|
| Reference in the law Articles 28 and 35 of CVM Instruction 361. |
|--|

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|---|
| An investor is he required to announce a tender offer to subscribe for the sale of all remaining shares. The OPA shall always be indistinctly addressed to the holders of shares of the same type and class of those that are object of the OPA |
|---|

| |
|---|
| Reference in the law Item I of Article 4 of CVM Instruction 361. |
|---|

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| Yes | |
| Comments, if any | |
| The offerer shall hire a brokerage society or a distributor of stock and securities or financial institution with investment portfolio to intermediate the OPA. The intermediary institution shall guarantee the financial settlement of the OPA, and the payment of the purchase price. | |
| Reference in the law Article 7 and its Paragraph 4; Paragraph 2 of Article 10, all of CVM Instruction 361. | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes | |
| Comments, if any | |
| The rule is that the OPA shall be immutable and irrevocable after the announcement is published. However, the rule does provide for exceptions when an OPA (tender offer) is subject to register. . | |
| Reference in the law Item IX of Article 4 and article 5 of CVM Instruction 361; Item III to VIII of Article 11 of Law 6385/76.. | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Reference in the law

Item VIII and IX of Article 4; Article 5; Article 23 and 24, all of CVM Instruction 361.

How is the price in a tender offer established?

Does it have to be equal for all investors?

Yes

Reference in the law

Article 254-A of Law 6404/76 and Items II, V, VI and VII of Article 4 of CVM Instruction 361.

Is there a minimum price?

Yes

If yes, how it is defined *(e.g. an average market price for a given period before the announcement)*?

The offer price for such shares shall be at least eighty per cent (80%) of the amount paid for the voting shares comprising the controlling block. Whenever it is an OPA (tender offer) formulated by the company itself, by the controlling shareholder, or by a person entailed to him/her, it shall be elaborated an appraisal report of the object company.

Reference in the law

Articles 254-A and 4-A of Law 6404/76 and Items V and VI of Article 4 and Article 8 of CVM Instruction 361.

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

Yes

Reference in the law

Article 14 of CVM Instruction 361.

Are there any requirements concerning the price paid by the investor after the take over? *(e.g. can the price paid immediately after the take over differ from the price offered in the take over process)*

Yes

Reference in the law

Article 10 and its Item I of CVM Instruction 361.

What kind of problems do you face in enforcement of takeovers regulations?

In a tender offer procedure, the requisition of registration shall be judged by CVM within the term of 30 (thirty) days, to be counted from the date the requisition is registered in CVM; it is presumed to be deferred if there is no manifestation of CVM during that term. In case the CVM needs information on a deal which may have taken place or occurred in one or more foreign jurisdictions, and the request for cooperation is not promptly assured or is for some reason delayed, problem may arise. Furthermore, when the deal involves an off-shore company there may be difficulties in obtaining international cooperation.

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| If yes, what kind of issues should be presented? | |
| The tender offer cases involving international cooperation | |

Bulgaria

| Jurisdiction | Name of authority |
|--------------|----------------------------------|
| BULGARIA | FINANCIAL SUPERVISION COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

Financial Supervision Commission

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any Any person whose voting right under Art. 148 of the Law on Public Offering of Securities (LPOS) reaches, exceeds or falls below five percent or a multiple of 5 percent of the total number of votes in the general meeting of the company whose shares were accepted for trading on a regulated market has an obligation relating to disclosing of shareholding. | |
| Reference in the law Art. 145, para 1 of the Law on Public Offering of Securities. | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| votes |
| Reference in the law Art. 145 and following of the Law on Public Offering of Securities |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| The disclosure threshold, upon the passing of which an obligation arises in respect to the shares accepted to be traded on a regulated market has been set as five percent or a multiple of 5 percent of the total number of votes in the general meeting of a company. The obligation for notification is applied also in cases of acquisition or transfer of convertible bonds or warrants. |
| Reference in the law Art. 145, para 1 and Art. 146 of the Law on Public Offering of Securities |

Whom the investor is obliged to inform and when?

| | |
|--|---|
| supervisory authority exchange a company | Deadline - 7 days Deadline - 7 days Deadline - 7 days |
| Comments, if any The obligation for notification is fulfilled within 7 days from entering the corresponding company in the commercial register or from the date of acquisition or transfer of the shares. | |
| Reference in the law Art. 145, para 4 of the Law on Public Offering of Securities | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| acquisition disposal |
| Reference in the law Art. 145, para 1 of the Law on Public Offering of Securities |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| In case of failure to fulfil the obligation for disclosure of shareholding, a fine to the amount from BGN 2 000 to BGN 5 000 is envisaged for the natural persons, and for the legal entities and sole traders – property sanctions to the amount from BGN 5 000 to BGN 10 000. |
| Reference in the law Art. 221, para 1, Item 3 and para 8, Item 3 of the Law on Public Offering of Securities |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| <p>In exercising the powers of the Commission and its bodies, the members of the Commission, as well as the Commission Officials designated in pursuance with the procedure provided for in the Financial Supervision Commission Act, have the right to conduct inspections on the compliance with the Law on Public Offering of Securities and the secondary legislation for its application. Inspections are conducted by Commission administration officials designated by an order of the Chairman or the respective Vice Chairman of the Commission, inspections on site and on the Commission premises against documents may be conducted.</p> <p>A statement of findings is prepared in two copies which is signed by the Commission's officials who have conducted the inspection and is served against signature to the inspected person.</p> | |
| Reference in the law Art. 18, para 1 in relation to Art. 19 of the Financial Supervision Commission Act. | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

For the purposes of notification for disclosure of shareholding, to the votes of directly held shares of the obliged to make disclosure person are added the following voting shares:

- held by the spouse or minors of the obligated person;
- held by a company, over which the obligated person has control;
- held by third parties in their own name but for the account of the obliged person;
- held by a person with which the obliged person has made a written agreement to pursue a common policy relating to the management of the corresponding company through the joint exercise of the rights to vote held by them;
- held by a person with which the obliged person or a person controlled by the latter has made a written agreement providing for a temporary transfer of the rights to vote attached to the securities;
- provided by the obliged person as a collateral, unless the secured creditor exercises the rights to vote;
- deposited with the obliged person while transferring the rights to vote and without special instructions from the shareholders.

Reference in the law
Art. 148 of the Law on Public Offering of Securities

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes | |
| <p>Comments, if any</p> <p>The public company must be notified of any person whose voting right under Art. 148 reaches, exceeds or falls below 5 percent or a multiple of 5 percent of the total number of votes at the general meeting of the company whose shares were accepted for trading on a regulated market. In the cases where the obligated person is a company or any other legal entity, the notification must also indicate the persons that control it directly or indirectly under the terms and conditions of Art. 148, as well as the way in which the control is being exercised.</p> | |

Reference in the law
Art. 145, para 1 and 2 of the Law on Public Offering of Securities

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The persons obliged to provide the information about acquisition of shareholding are:
Central depositary and the person whose voting right reaches, exceeds or falls below the disclosure thresholds – when the alteration in the votes number of the obliged person occurs as result of direct acquisition or transfer of shares;
The person whose voting right reaches, exceeds or falls below the established disclosure thresholds – when the alteration in the number of his/her rights to vote occurs as a result of one or more of the cases under Art. 148, items 1-7 of the LPOS (indirect acquisition), including when combined with a direct acquisition or transfer of shares.

Reference in the law

Art. 145, para 3, Item 1 and 2 of the Law on Public Offering of Securities

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

No

Comments, if any (is there any special procedure for providing such information)

The Law does not envisage an obligation of the public companies to provide information in the cases of investors' acquisition of substantial blocks of the shares of a given company.

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

There is no such obligation.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

There is no sanction envisaged, as the Law does not provide for such obligation.

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>A person who has acquired directly, through related persons or indirectly under the conditions of Art. 149, para 2 of the LPOS more than 1/2 or 2/3 of the votes at the general meeting of a public company is obliged to register with the Commission a tender offer to the remaining shareholders with voting shares for the acquisition of their shares and/or exchange of the latter with shares which will be issued for this purpose by the offeror.</p> <p>A tender offer must also be announced by the following persons: Any person who holds directly, through related persons and/or indirectly under Art. 149, para 2 of the LPOS more than 50 per cent of the votes at the general meeting of a public company shall not be entitled within a year to acquire on a regulated market directly, through related persons and/or indirectly under Art. 149, para 2 of the LPOS voting shares representing more than 3 percent of the total number of voting shares in the general meeting of such company without making a tender offer.</p> <p>A public company may acquire for one calendar year more than 3 per cent of its own voting shares in cases of capital reduction by cancellation of shares and redemption only under the terms and procedures of tender offers.</p> | |
| <p>Reference in the law Art. 149, para 1, 6 and 8 and Art. 111, para 5 of the Law on Public Offering of Securities</p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>The person is not obliged to announce a tender offer if within 14 days from the acquisition, such person transfers the necessary number of shares in order to hold less than 1/2, respectively 2/3 of the votes at the general meeting of the company.</p> <p>The person is exempted from its obligation to announce a tender offer if the exceeding of the threshold of 1/2, respectively 2/3 is as a result of a privatization transaction under Art. 32 of the Privatization and Post-privatization Control Law, except if the transaction was concluded on a regulated market.</p> |
| <p>Reference in the law Art. 149, para 1, Item 2 and Art. 149, para 6 of the Law on Public Offering of Securities. § 10, para 2, Item 1 of the Law on Public Offering of Securities.</p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|---|
| The tender offer may be restricted to the acquisition of exactly specified number of shares with voting right at the general meeting of the public company in the cases under Art. 149b, Art. 149, para 8 and Art. 111, para 5 of the LPOS. |
|---|

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|----------------------|
| Reference in the law |
|----------------------|

| |
|---|
| Art. Art. 111, para 5, 149b and Art. 149, para 8 of the Law on Public Offering of Securities. |
|---|

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|-----|--|
| Yes | |
|-----|--|

| |
|------------------|
| Comments, if any |
|------------------|

| |
|--|
| The tender offeror must submit proof of the availability of funds for the offer's financing. |
|--|

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|---|
| Art. 150, para 2, Item 6 of the Law on Public Offering of Securities. |
|---|

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|-----|--|
| Yes | |
|-----|--|

| |
|------------------|
| Comments, if any |
|------------------|

| |
|--|
| In the cases where the announcement of a tender offer is mandatory (when exceeding the thresholds of 1/2 and 2/3), the same may be withdrawn only when the offer cannot be executed for reasons beyond the control of the offeror, the time for acceptance has not expired, and when the Commission agrees thereto. Till the publishing of a subsequent offer the person does not have the right to exercise his voting right in the general meeting of the company. |
|--|

| |
|--|
| In the other cases the tender offer may be withdrawn without the existence of the above stated conditions. |
|--|

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|----------------------|
| Reference in the law |
|----------------------|

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|---|
| Art. 155, para 1 and 2 of the Law on Public Offering of Securities. |
|---|

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

The tender offeror may extend the time limit for accepting the offer within the frame of the maximum period allowed, provided for by law, or increase the price offered for each share. The amendments are registered with the Commission and published immediately in two daily central newspapers, where the tender offer was published. Other amendments, beyond the above stated, are registered with the Commission and may be published if within three working days the Commission does not issue a prohibition. Any amendments to the tender offer may not be published later than 10 days before the expiration of the time-limit of its acceptance.

A person that has accepted the offer has the right to withdraw such acceptance at any time until the expiration of the time limit of its acceptance.

Reference in the law

Art. 155, para 4 and 5, Art. 156, para 1, second sentence under the Law on Public Offering of Securities and Art. 33 of Ordinance № 13 of 22 December, 2003 on Tender Offer for the Purchase and Exchange of Shares.

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any | |
| The proposed by the tender offeror price per share, issued by a public company, must be equal in respect to all other shareholders. | |
| Reference in the law | |
| Art. 4 of Ordinance № 13 of 22 December, 2003 on the Tender Offer for Purchase and Exchange of Shares. | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? | |
| The price, respectively the exchange value of the mandatory tender offers and of the tender offer by a person, holding over 90 per cent of the votes at the general meeting of a public company may not be lower than the higher value out of: 1) the fair price of a share calculated on the basis of generally accepted valuation methods; and 2) the average weighted market price of the shares for the preceding 3 months and if there is no such price – the highest price for a share paid by the offeror during the 6 months preceding the registration of the offer; In cases when the share price cannot be determined in accordance with the previous sentence, it shall be determined as the higher of the last issuing value and the last price paid by the tender offeror. The price, the exchange value respectively, in the other cases of tender offer may not be lower than the average weighted market price for a share paid by the offeror during the 6 months preceding the registration of the offer. The tender offeror may justify the price they offer on the basis of the fair price of the share, calculated on the basis of generally accepted valuation methods. | |
| Reference in the law | |
| Art. 150, para 6, 7 and 8 of the Law on Public Offering of Securities. | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes | |
| Comments, if any The price paid by the offeror during the last 6 months is a criterion in determining the offered price, in so far as there is no average weighted market price of the shares for the preceding three months. | |
| Reference in the law Art. 150, para 7 of the Law on Public Offering of Securities. | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|--|--|
| Yes | |
| Comments, if any Only in the cases of tender offer when exceeding the threshold of 90 per cent, the tender offeror is obliged to purchase the shares of each shareholder on demand until a tender offer has been published, as well as 14 days after its closing date at price, determined in compliance with Art. 150, para 7 of the LPOS. | |
| Reference in the law Art.149a, para 4 of the Law on Public Offering of Securities. | |

What kind of problems do you face in enforcement of takeovers regulations?

No answer.

Do you think a seminar on takeovers should be organized?

No answer.

China

| Jurisdiction | Name of authority |
|--------------|---|
| China | China Securities Regulatory Commission (CSRC) |

Which authority is responsible for takeovers in your jurisdiction?

CSRC is responsible for takeovers of publicly listed companies (PLC) in China.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any The acquirer is required to inform about the acquisition of substantial blocks of shares to the company whose shares have been acquired, to the Stock Exchange where the company is listed, to CSRC and to the public at large in securities newspapers. | |
| Reference in the law Section 4 of the securities Law; Chapter III of Administrative Measures for the Disclosure of Information on Changes in Shareholdings of Shareholders of PLC (thereafter <i>Disclosure Order</i>) | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

Under China's Company Law, only common shares are issued, one share one vote.

What are disclosure thresholds?
(e.g. 5%, 10%)

Mainly, the disclosure threshold is more than 5% voting shares (including 5%).
Thereafter, for exchange-traded shares, the threshold is 1% up and down after the shareholder hold more than 5% voting shares.
Reference in the law
Section 4 of the securities Law; Chapter III of *Disclosure Order*

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority exchange news agency a company | Deadline within 3 or 2 days(see comments) Deadline within 3 or 2 days(see comments) Deadline within 3 or 2 days(see comments) Deadline within 3 or 2 days(see comments) |
| Comments, if any The first 5%, the disclosure should be made within 3 days of acquisition; After the first 5%, the disclosure should be made within 2 days of occurrence of a change involving an additional 5% | |
| Reference in the law Section 4 of the securities Law; Chapter III of <i>Disclosure Order</i> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Comments, if any Before the disclosure and within two days after disclosure, the shareholder is forbidden to further acquire or dispose the shares. If a takeover occurs, the acquirer could only dispose his share six months later from the takeover. |
| Reference in the law Section 4 of the securities Law; Chapter III of <i>Disclosure Order</i> |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| China Securities Depository and Clearing Corporation Limited (thereafter <i>the clearing house</i>) will not transfer the shares under the name of the acquirer. If the acquirer takes over the PLC by some indirect means, the acquirer is not allowed to nominate the director(s) to PLC. |
| Reference in the law Chapter IV of <i>Disclosure Order</i> ; Chapter V of Administrative Measures Related To Acquisition Of Listed Company (thereafter <i>Takeover Order</i>) |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) From the shareholding disclosure report From the registration list of <i>the clearing house</i> | |
| Reference in the law Chapter III of <i>Disclosure Order</i> ; Chapter II and III of <i>Takeover Order</i> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Chapter III of *Disclosure Order*, define “persons acting in concert”; as well as require the “control person” of capital groups to disclosure.

In the case of “persons acting in concert” and “control person”, it is required to combine the voting shares both held and controlled by them.

Reference in the law

Chapter III of *Disclosure Order*

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Comments, if any

Please see Question 1 in Part I

Reference in the law

Please see Question 1 in Part I

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The shareholder should inform the company if he acquires or disposes substantial block of share of a given company.

The share transfer should register the acquirer’s name and share number in the company’s shareholder book.

At the same time, the shareholder should announce the acquisition or disposal in a designated national newspaper.

Reference in the law

Section IV of the Securities Law

The article 145 of the Company Law

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

Yes

supervisory authority

market

investors

Comments, if any (is there any special procedure for providing such information)

Please refer to comments in Question 1 above and Question 1 of Part I.

Reference in the law

Section 4 of the securities Law; Chapter III of *Disclosure Order*

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| As the company is informed of the acquisition, it should make a temporary report on financial newspapers if the acquirer has not disclosed the relevant information. |
|--|

| |
|--|
| Reference in the law Article 62 of the Securities Law |
|--|

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|--|
| There is no sanction for the company in laws, but the stock exchange could reprimand the directorship of the company for such a failure. |
|--|

| |
|---|
| Reference in the law List Rule of the stock exchange |
|---|

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>When any person acquires a given PLC's share, directly or indirectly, singles or together with person acting in concert, reaching thirty per cent voting shares, if the person wants to further increase his/her holding, he/she should make a mandatory general offer to all of the shareholders of the PLC.</p> | |
| Reference in the law Section IV of the Securities Law | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

There are some situations in which the acquirer is not obliged to announce a tender offer after exceeding a certain threshold of shares.
Esp. the acquirer proposes a rescue scheme to the PLC in poorest financial situation,
Shares freely transferred by government administrative approval, the control person on the top has not actually changed, whitewash etc.

Reference in the law

The section IV of *Takeover Order*

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Yes. The investor's offer must exceed 5% voting shares, but after the offer, his/her shareholding could not exceed 30% voting shares (voluntary offer). If exceed 30%, he must make mandatory general offer.

Reference in the law

The section III of *Takeover Order*

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes

Comments, if any

The acquirer must deposit 20% of the offering consideration in *the Clearing House*, and the acquirer should demonstrate his capability to undertake the offering, with the financial advisor to do the due diligence to verify his capability.

Reference in the law

The section III of *Takeover Order*

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Yes

Comments, if any

Before the offer is permitted by CSRC, the acquirer is allowed to withdraw the offer.
But the acquirer is not allowed to make offer one year after the withdrawal, at the same time, the deposit should be on probation.

Reference in the law

The section III of *Takeover Order*

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|---|
| If the acquirer wants to change the takeover bid, the offering conditions must be better than the original ones. The acquirer is not allowed to change the bid within final 15 days of the offering period. |
|---|

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|--|
| The section III of <i>Takeover Order</i> |
|--|

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|-----|--|
| Yes | |
|-----|--|

| |
|------------------|
| Comments, if any |
|------------------|

| |
|---|
| The tender offer must apply to all the shareholders of the company; meanwhile, shareholders within the same group (investors who hold liquidable shares and investors who hold nonliquidable shares) are treated equally (at the same price). In case of partial offer, the acceptance must be made on pro rata base. |
|---|

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|--|
| The section III of <i>Takeover Order</i> |
|--|

Is there a minimum price?

| | |
|-----|--|
| Yes | |
|-----|--|

| |
|--|
| If yes, how it is defined (e.g. an average market price for a given period before the announcement)? |
|--|

| |
|--|
| The best price principle is applied, for the exchange-traded shares, the higher price is chosen within the following two price: (1)the highest price paid by the acquirer, and (2) the average of the daily weighted average prices ; for nontradable shares(legal person shares and state owned shares of listed companies that are not tradable at stock exchanges but transferable through off-exchange agreement), the higher price is chosen within the following two price: (1)the highest price paid by the acquirer and (2) the net asset value per share. |
|--|

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|--|
| The section III of <i>Takeover Order</i> |
|--|

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (e.g. over the last 12 months)?

| | |
|----|--|
| No | |
|----|--|

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

In reality, there exists two kinds of shareholders who hold tradable shares and who hold nontradable shares in China, the above two kinds of shares are traded differently at different price, but not recognised as different class of shares by laws.

The most difficult problem is how to equally treat the tradable shareholders and nontradable (which accounts for 2/3 of listed companies' all shares) shareholders.

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| If yes, what kind of issues should be presented? | |
| Protection of Minority Shareholders | |
| Anti-takeover regulation | |
| Takeover and prevention of insider trading | |

Croatia

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| Croatia | The Croatian Securities Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Croatian Securities Commission

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any Law on securities market Article 115. When a natural or legal person directly or indirectly acquires or disposes shares of a public joint stock company, and as a consequence of that fact the proportion of votes in the assembly which that person or entity possesses exceeds or falls below the following thresholds: 10%, 25%, 50% or 75%, that person or entity must notify in writing the Commission and the issuer of that acquisition or disposal, within 15 days. Rules given by (two egzisting) stock exchanges in Republic of Croatia regulate that the joint-stock companies have obligation to inform the stock exchange about changes in ownership structure in terms of tresholds mentioned in art. 115. - Law on securities market. (Zagreb Stock Exchange Rules – art. 5.2.2.3.4.) (Varaždin Stock Exchange Quotation of the public joint stock companies rules – art. 19.2.7.) Article 117. An issuer - public company with share capital who receives the notice referred to in Article 117 of this Act shall be required to publish it in the daily press accessible throughout the territory of the Republic of Croatia within seven days from the date of its delivery. (Law on securities market – articles 115. and 117.) | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| votes |
| Reference in the law (Law on securities market – article 115.) |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|--|
| 10%, 25%, 50% or 75% |
| Reference in the law: (Law on securities market – article 115.) |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority exchange a company | Deadline 15 days Deadline 15 days Deadline 15 days |
| <p>Comments, if any</p> <p>(Law on securities market – article 115.) In case of article 115 there is obligation to inform a company and the supervisory authority (Croatian securities commission).</p> <p>(Law on securities market – article 117.) in case of article 117 public joint stock company has obligation to inform public of change in ownership-structure (article 115)</p> <p>According to the Law on take over of joint stock companies, investor who is obliged to publish a takeover bid, has also obligation to notify the issuer (public joint stock company), the Commission and the public of such acquisition without any delay (Article 4. paragraph 1). The notice contain (also) all details, including the number of votes expressed both as absolute number and as percentage, of all issuer's shares belonging to the offerer, including the shares of the persons that act in concert with the offerer (Article 4. paragraph 6 and Article 12. paragraph 1. provision 3). Also, the rules given by stock-exchange as self-regulatory body, approved by the Croatian security commission, regulate also informing of substantial changes in ownership structure.</p> <p>Reference in the law (Law on securities market – article 115.) (Law on take over of joint stock companies - Article 4. paragraph 1, Article 4. paragraph 6. and Article 12. paragraph 1. provision 3) (Zagreb Stock Exchange Rules – art. 5.2.2.3.4.) (Varaždin Stock Exchange Quotation of the public joint stock companies rules – art. 19.2.7.)</p> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| acquisition disposal |
| <p>Reference in the law (Law on securities market – article 115.) (Law on take over of joint stock companies - Article 4. paragraph 1, Article 4. paragraph 6. and Article 12. paragraph 1. provision 3)</p> |

What is the sanction in case of failure to disclose shareholding in listed companies?

(Law on securities market – article 153.)

Whoever omits to supply data on ownership pursuant to Article 115 of this Act shall be subject to a fine not exceeding 200 daily incomes or up to one-year imprisonment.

If a considerable material gain has been realised or considerable damage occurs to a third party because of the criminal offence referred to in paragraph 1 of this Article, the offender shall be subject to a fine of at least 250 daily incomes or up to three years imprisonment.

(Law on take over of joint stock companies – Article 35. paragraph 2. provision 1.

A pecuniary penalty ranging between KN 200,000.00 and KN 600,000.00 shall be imposed on natural persons or legal entities if:

contrary to the provisions of Article 4 hereof, they do not notify, without any delay, the Commission, the issuer and the public of the acquisition of shares;

Reference in the law

(Law on securities market – article 153.)

(Law on take over of joint stock companies – Article 35. paragraph 2. provision 1.

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| (Law on securities market-art.12.(1) | |
| In performing its public authorities, the Commission shall, among others: | |
| - supervise operations in exchanges, regulated public markets, authorised companies, issuers of securities, investment and privatisation investment funds, companies for managing investment and privatisation investment funds, brokers, investment advisors, institutional investors, central depository agency, pursuant to this Act, the Act on the Takeover of Companies with Share Capital, the Investment Funds Act, the Privatisation Investment Funds Act, regulations adopted pursuant to these Laws and Acts and other legal acts that regulate these matters. | |
| Article 13. paragraph 1. | |
| The Commission and bodies responsible for supervision of other financial institutions in the Republic of Croatia shall, at the request of an individual supervisory body, deliver to that body all the data and information on the entity being supervised that are necessary to carry out supervision and in the procedure of the issuance of licenses. | |
| Reference in the law | |
| (Law on securities market-art.12.3. | |
| (Law on securities market-art.13.paragraph 1.) | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Article 8.

(1) Natural persons and/or legal entities shall act in concert:

if they have agreed to harmonise their actions with respect to the acquisition of the issuer's shares or with respect to exercising their right to vote towards the issuer; or

if one of them holds the shares for the account of another.

(2) Legal entities, as well as natural persons and legal entities shall act in concert when one of them directly or indirectly controls another or other legal entities.

(3) Pursuant to paragraph 2 of this article, a natural person or a legal entity is deemed to be controlling a legal entity if:

it holds, directly or indirectly, a share portion of 25% and a larger share portion of the stock capital of the legal entity;

it has, directly or indirectly, 25% and more voting rights at the general assembly of the legal entity;

it has the right to manage business and financial policies of the legal entity on the basis of statutory authorisations or the authorisations arising from agreements;

it exerts, directly or indirectly, the prevailing influence on the management of business operations and the decision-making process.

(4) Companies shall act in concert if they are interrelated pursuant to the provisions of the Companies Act.

(5) Natural persons are considered to be acting in concert if they are consanguineously related by lineal kin or if they are brothers and sisters and if they are spouses.

(6) The establishment of acting in concert by an agreement referred to in paragraph 1, item (a) above, has been made equal to the acquisition of shares carrying voting rights.

(7) The votes of persons that act in concert with the offeree shall be added to the offeree's votes.

When the obligation to publish a takeover bid results from the establishment of acting in concert based on an agreement referred to in paragraph 1, item (a) above, or if one of the persons that act in concert acquires shares so that such acquisition results in the obligation to publish a takeover bid, every such person shall be obliged to publish a takeover bid in accordance with the terms and conditions hereunder. The obligation to publish a takeover bid shall be deemed fulfilled if the bid has been published by any of the persons who act in concert.

Reference in the law

(Law on take over of joint stock companies – Article 8.)

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes | |
| <p>Comments, if any (Law on securities market - Article 115.) When a natural or legal person directly or indirectly acquires or disposes shares of a public joint stock company, and as a consequence of that fact the proportion of votes in the assembly which that person or entity possesses exceeds or falls below the following thresholds: 10%, 25%, 50% or 75%, that person or entity must notify in writing the Commission and the issuer of that acquisition or disposal, within 15 days. (Law on securities market - Article 132. paragraph 4.) The central depository agency is a legal person authorised for performing tasks related to the depository of dematerialised securities, clearing and settlements of legal operations performed with securities. The central depository agency shall the data concerning the identity of 10 largest owners of any security make accessible to the public.</p> | |
| <p>Reference in the law (Law on securities market – articles 115. and 132. paragraph 4.)</p> | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| <p>The sources are data given by person who acquires or dispose specific amount of shares and data given by Central depository agency.</p> |
| <p>Reference in the law (Law on securities market – article 115. and 132. paragraph 4.)</p> |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| |
|---|
| <p>Yes</p> <p>supervisory authority</p> <p>market</p> <p>other</p> |
| <p>Comments, if any (is there any special procedure for providing such information)</p> <p>Article 106.</p> <p>Issuer of securities listed on an exchange or regulated public market must promptly inform the public of all information pertaining to circumstances or decisions that constitute material facts. Material facts for the purpose of the provisions of paragraph 1 of this Article mean all information and facts that can influence the price of securities.</p> <p>Article 19.</p> <p>All data and information published under the provisions of this Act, the Joint-Stock Company Take-over Act, the Investment Funds Act, the Privatisation Investment Funds Act must be presented to the Commission before their publication.</p> <p>5.2.1.3.4</p> <p>The Issuer shall with out delay inform the Stock Exchange and public about each material fact arising from running the business or other events, like outside influences, changes of business circumstances, and similarly, which can affect on legal and finance status of the issuer, particularly, among athers, on material investmemts (investments to the value of more than 5% of market capitalization).</p> <p>Reference in the law</p> <p>(Law on securities market –Articles 106., 19.</p> <p>The Zagreb Stock Exchange Rules – Article 5.2.1.3.4</p> |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|---|
| <p>An issuer - public joint stock company who receives the notice referred to in Article 115 shall be required to publish it in the daily press accessible throughout the territory of the Republic of Croatia within seven days from the date of its delivery.</p> |
| <p>Reference in the law</p> <p>(Law on securities market – article 118.)</p> |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

(1) Whosoever omits to supply data on ownership pursuant to Article 115 of this Act (Law on securities market) shall be subject to a fine not exceeding 200 daily incomes or up to one-year imprisonment.

(2) If a considerable material gain has been realised or considerable damage occurs to a third party because of the criminal offence referred to in paragraph 1 of this Article, the offender shall be subject to a fine of at least 250 daily incomes or up to three years imprisonment.

Reference in the law

(Law on securities market - article 153.)

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|-----|--|
| Yes | |
|-----|--|

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

Take over act - article 4. par. 1.

The person that acquires the issuer's shares that, together with the shares that he already possesses, exceed a threshold of 25% of the total number of votes accorded by the issuer's shares carrying voting rights, shall notify the issuer, the Commission and the public of such acquisition without any delay and publish a takeover bid in accordance with the terms and conditions hereunder.

Take over act – article 4. par. 3.

The person that, based on a takeover bid, has acquired less than 75% of shares carrying voting rights, shall publish a takeover bid in the case of further acquisition of the same issuer's shares. The person that, based on takeover bids, has acquired 75% or more of shares carrying voting rights shall publish a takeover bid in the case of further acquisition of the same issuer's shares carrying voting rights when:

such person acquires additional 5% of shares carrying voting rights following a takeover bid, there is a lapse of 18 months following the day of the actual acquisition of shares after a previous takeover bid.

The establishment of acting in concert by an agreement (to harmonise actions with respect to the acquisition of the issuer's shares or with respect to exercising right to vote towards the issuer), has been made equal to the acquisition of shares carrying voting rights.

(Take over act – art. 8. par. 6.)

The shareholders that, at the date of enactment of this Law, have at their disposal more than 25% and less than 75% of voting rights out of the total number of the issuer's issued shares carrying voting rights and that, after the enactment of this law, acquire the issuer's shares carrying voting rights, shall be obliged to publish a takeover bid.

The shareholders that, at the date of enactment of this Law, hold more than 25% of voting rights out of the total number of the issuer's issued shares carrying voting rights, and that were not obliged to publish a takeover bid, and that following the enactment of this Law acquire the issuer's shares carrying voting rights, shall be obliged to publish a takeover bid.

The shareholders that, at the date of enactment of this Law, hold less than 25% of voting rights out of the total number of the issuer's issued shares carrying voting rights, and that did not publish a takeover bid and that, following the enactment of this Law acquire the issuer's shares thereby exceeding a threshold of 75% of the total number of votes accorded by the issuer's shares carrying voting rights, shall be obliged to publish a takeover bid.

(Take over act – art. 37. paragraphs 1-3)

Our regulations refer to the fact that the investor holds specified number of shares/votes, and to the fact of acting in concert.

Reference in the law

Take over act –art. 4. par. 3., art.8. par. 6., art.37.par.1-3.

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

- (1) The offeree shall not be obliged to publish a takeover bid if:
- 1) he acquires the issuer's shares by inheritance;
 - 2) he acquires the issuer's shares by division of marital acquisition;
 - 3) he acquires the issuer's shares by increasing the stock capital through investments in issued shares by private placement, whereas the issuer's general assembly, prior to the registration of shares, agrees that the offeree may acquire more than 25% of the total number of shares carrying voting rights without the obligation to publish a takeover bid;
 - 4) he acquires the shares of the issuer that is a bankrupt's debtor in bankruptcy proceedings;
 - 5) he acquires the issuer's shares through a merger of companies, however, exclusively when only one company involved in such merger has issuer's shares;
 - 6) he acquires shares through a change of the company's legal form;
 - 7) the legal entity acquires issuer's shares from another legal entity whose members or shareholders are either directly or indirectly the same persons, or if it acquires the shares through a transfer due to a restructuring within the group.
- (2) The issuer's general assembly shall grant the approval set out in paragraph 1, item 3 above by a majority of three-fourths of votes cast by the present members of the general assembly, excluding the votes of the offeree and the persons that act in concert with it.
- (3) The Republic of Croatia, the Croatian Privatisation Fund and the State Agency for Financial Rehabilitation of Banks and Savings Deposit Insurance, as offerees of the shares carrying voting rights, shall not be obliged to publish a takeover bid if they, within 14 days after the obligation to publish a takeover bid has been created, notify the Commission and the issuer of their intention to alienate a surplus of shares exceeding a threshold of 25%, provided that they alienate such surplus of shares within 6 months.

Reference in the law
(Take over act – art. 7. par. 1-3)

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

An investor is required to announce a tender offer to subscribe for the sale of all remaining shares carrying voting rights.

Article 14.

(1) The offerer cannot impose any conditions whatsoever on the obligation to purchase the shares that are the subject of a takeover bid.

(2) By way of derogation from the provision of paragraph 1 of this article, the offerer may state in a bid that he will not purchase encumbered shares or the shares that will be deposited for the acceptance of the takeover bid if the total number of votes accorded by such deposited shares, together with the total number of votes that the offerer already has, does not exceed 50% of voting rights accorded by all the issued shares carrying voting rights. In such a case, if an insufficient number of shares is being deposited, the offerer shall not be obliged to purchase and take over the deposited shares.

Reference in the law

(Take over act - articles 14. and 2. paragraph 2.)

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| Yes | |
| <p>Comments, if any</p> <p>Prior to filing a request for the approval to publish a takeover bid, the offerer shall put on a separate bank account the cash assets necessary for the payment of all shares that constitute the subject of the takeover bid, or he shall conclude a loan agreement with the bank for this purpose, or obtain an *irrevocable independent bank guarantee on behalf of shareholders who will deposit their shares, for an amount necessary for the payment of all shares referred to as the subject of a takeover bid.</p> <p>When the takeover bid is published by a bank, such bank shall agree with another bank on the assurance of assets set out in paragraph 1 of this article.</p> <p>The validity of the bank guarantee set out in paragraph 1 of this article cannot be shorter than 15 days from the last date of the shares payment as stipulated by Article 15, paragraph 7 hereof.</p> <p>The offerer must not dispose of cash assets which are put on a separate account in order to assure the payment of deposited shares, except for the payment of deposited shares. The offerer shall provide the possibility of an independent insight into the state of the separate account for the Commission.</p> <p>Upon the expiry of the takeover bid validity period, the offerer may collect a surplus from the separate account, i.e. the surplus exceeding the amount necessary for the payment of deposited shares, only after the Commission has received a report on the takeover.</p> <p>The offerer may not change the conditions of the agreement on a separate account or the conditions of a loan agreement or the conditions of an agreement on the bank guarantee for the payment of all shares that are the subject of a takeover bid, except when it is absolutely certain that such changed conditions cannot diminish the shareholders' security.</p> <p>The offerer must immediately notify the Commission of any change to the conditions of the agreement on a separate account, loan agreement or bank guarantee, and submit a copy of the amended agreement or guarantee.</p> | |
| <p>Reference in the law (Take over act – art. 9)</p> | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|--|
| Yes | |
| Comments, if any | |
| <p>Article 14.</p> <p>(1) The offerer cannot impose any conditions whatsoever on the obligation to purchase the shares that are the subject of a takeover bid.</p> <p>(2) By way of derogation from the provision of paragraph 1 of this article, the offerer may state in a bid that he will not purchase encumbered shares or the shares that will be deposited for the acceptance of the takeover bid if the total number of votes accorded by such deposited shares, together with the total number of votes that the offerer already has, does not exceed 50% of voting rights accorded by all the issued shares carrying voting rights. In such a case, if an insufficient number of shares is being deposited, the offerer shall not be obliged to purchase and take over the deposited shares.</p> <p>Article 9.</p> <p>(1) The offerer may withdraw the published takeover bid if:</p> <p>1) the competing bid is higher;</p> <p>2) the issuer has become bankrupt.</p> <p>(2) The offerer shall announce the withdrawal of the takeover bid in the manner prescribed for the publication of a takeover bid.</p> | |
| Reference in the law | |
| (Take over act – art. 14. and 9. | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Art. 15. par. 8.

The offerer may neither reduce the offered price nor change the payment term or mode as stipulated by the bid, but he can increase the offered price.

Art. 13. par. 4. and 5.

The offerer may file a request for the approval to publish a modification of the takeover bid to the Commission not later than 7 days prior to the expiration of the bid validity period. The Commission shall issue a formal decision on the offerer's request for the approval to publish such modification within 3 days after the receipt of a duly submitted request.

If the Commission does not issue a formal decision on the request to publish a modification of the takeover bid within 3 days after the receipt of a duly submitted request, the request shall be deemed approved.

Art 15. par. 2.

In the case of publishing a modification of a takeover bid, the bid validity period shall be extended by seven days, whereby the entire bid validity period may not exceed 60 days, except if it has been extended due to the publication of competing bids.

Reference in the law

(Take over act – art. 15. par. 8., art. 13. par. 4. and 5., art. 15. par. 2.

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any | |
| In Croatian national value – HRK (Croatian Kuna) | |
| Art. 15. par. 8. | |
| The offerer must pay the same price for each share of the same class. | |
| Reference in the law | |
| (Take over act – art. 15. par.8.) | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>Art. 15. par 3. The offered price may not be lower than the highest price at which the offerer or the person that acts in concert with it, has acquired shares carrying voting rights in a period of one year prior to the date of publication of the takeover bid.</p> <p>Art. 15. par 4. If the offered price from the preceding paragraph is lower than the average price achieved on the stock exchange or regulated public market, the offerer must offer at least the average price achieved on the stock exchange or regulated public market.</p> <p>Art. 15. par 5. If the offerer or the person who acts in concert with the offerer has not acquired, within a year prior to the publication of the bid, the issuer's shares that are the subject of the bid, the price in the bid may not be lower than the average price achieved on the stock exchange or the regulated public market.</p> <p>Art. 15. par 6 The average price of shares listed on the stock exchange or regulated public market is calculated as the weighted average of close prices in the last 3 months prior to the day when the obligation to publish a takeover bid has arisen.</p> <p>Art. 4. par. 4. The price given in the takeover bid cannot be lower than the highest price at which the offerer or the person acting in concert has acquired shares carrying voting rights in the period following a previous takeover bid.</p> | |
| <p>Reference in the law Take over act – art. 15. par. 3.-6. and 8. and art. 4. par. 4.</p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|---|--|
| No | |
| <p>Comments, if any As described in answer 7.2.</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

Evidence of acting in concert. Acting in concert with the off-shore companies.

Do you think a seminar on takeovers should be organized?

| | |
|---|--|
| Yes | |
| If yes, what kind of issues should be presented? Evidence of acting in concert. Ownership structure of off-shore companies. To determinate (define) the lowest price in take over, in case when shares are acquired by swap-trade, in which process swapped shares are not liquid or they don't have market-price. Should change of the ownership structure in one company (A) affect on obligation to public takeover bid for (A) - affiliated company? | |

Czech Republic

| Jurisdiction | Name of authority |
|----------------|-----------------------------|
| Czech Republic | Czech Securities Commission |

Which authority is responsible for takeovers in your jurisdiction?

Czech Securities Commission (SEC)

What regulations address the problem of takeovers?

laws issued by President/Parliament (takeovers, disclosure duty)
implementing regulations issued by Government/SEC (disclosure duty)

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any applies only to publicly traded companies | |
| Reference in the law Section 183d of the Commercial Code (Act. No.513/1991 Coll., as subsequently amended). From 1 st May 2003 in connection with the entry of the Czech republic into the European Union a new regulation (currently in the form of bill) is expected to be passed by the parliament: The Act on Undertaking on the Capital Market; further only “The Bill of The Act on Undertaking on the Capital Market” | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| votes |
| Reference in the law Section 183d of the Commercial Code The Bill of The Act on Undertaking on the Capital Market |

What are disclosure thresholds?
(e.g. 5%, 10%)

The thresholds are defined in a static way i.e. 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 1/3, 40 %, 45 %, 50 %, 55 %, 60 %, 2/3, 70 %, 75 %, 80 %, 90 %, 95 %. The Act on Undertaking on the Capital Market will come into force, the thresholds for the notification duty should be 3 % (for the company whose registered capital is higher than 3 125 000 Euro), 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 40 %, 50 % and 75 %. The threshold for the initial duty of disclosure (regarding the company whose shares are first admitted to trade on the official market) is set to more than 5 % of all voting rights in the company.

Reference in the law
Section 183d of the Commercial Code
The Bill of The Act on Undertaking on the Capital Market

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority | Deadline within three working days after he learns (or could have learned) of the change |
| a company | Deadline as stated above |
| other (acc. to current legislation the Securities Centre) | Deadline as stated above |

Comments, if any

The investor shall inform SEC (supervisory authority), company and Securities Centre. The Securities Centre is obliged to publish the information within 9 calendar days after receiving it. According to The Bill of The Act on Undertaking on the Capital Market the investor shall inform the company and SEC within 3 working days. SCE will be obliged to publish the information within 7 calendar days after receiving the information.

Reference in the law
Section 183d of the Commercial Code
The Bill of The Act on Undertaking on the Capital Market

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition |
| disposal |
| Reference in the law Section 183d of the Commercial Code The Bill of The Act on Undertaking on the Capital Market |

What is the sanction in case of failure to disclose shareholding in listed companies?

The investor must not exercise voting rights attached to the securities acquired above the threshold which he had previously reported (if not reported to all of the participating securities acquired). Beyond that, he must not contractually acquire further participating securities. This sanction applies directly under the law.

Further, the Commission is empowered to impose corrective measures or sanction in form of pecuniary punishment up to 100 mil. CZK on the investor.

According to The Bill of The Act on Undertaking on the Capital Market the Commission is empowered to impose corrective measures or sanction in form of pecuniary punishment up to 5 mil. CZK on the investor.

Reference in the law

Section 183d paragraph 2 of the Commercial Code

Section 9 of the Act no. 15/1998 Coll. on the Securities Commission, as subsequently amended (further only the Securities Commission Act).

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes

Comments, if any (what would be the procedure for verification of such shareholding)
The Commission (particularly the Information Technologies and Monitoring Department) verifies data on shareholdings in the companies with registered shares received from the investors by comparing them with the data received from the Securities Centre (the central registrar of book-entered shares)

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Voting rights, which are at the disposal of:
a person controlled by the reporting person or
a person who exercises voting rights in a manner pursuing common policy in company's management with the reporting person on long term basis (under a written or an oral agreement),
are considered to be at the disposal of the reporting person.

Reference in the law

Section 183d paragraph 4 of the Commercial Code

The Bill of The Act on Undertaking on the Capital Market

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Reference in the law

Section 183d paragraph 1 of the Commercial Code

The Bill of The Act on Undertaking on the Capital Market

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The company is informed directly by the investor.

Reference in the law

Section 183d paragraph 1 of the Commercial Code

The Bill of The Act on Undertaking on the Capital Market

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

Yes

supervisory authority (to inform of the publication)

market (publish the information)

investors (publish the information)

other

Effective from the 1st of May 2004 if the Bill of The Act on Undertaking on the Capital Market wouldn't come into force.

Comments, if any (is there any special procedure for providing such information)

Such a duty applies to the issuers of shares listed in a stock exchange in another Member State of the European Union (European Economic Area) with registered office in the Czech Republic. The issuer is obliged to publish such information in form of an announcement in at least one daily newspaper with nationwide distribution within nine days and in the Commercial Bulletin without undue delay. He is also obliged to publish such an announcement in a daily newspaper distributed nationwide in that State or in another manner prescribed by the law of that State. The issuer is obliged to deliver evidence of the publication to the Commission and to organisers of markets in which the shares are accepted for trading.

This provision will become effective from the date of the accession of the Czech republic to the EU, i.e. 1st May 2004 provided that the Bill of The Act on Undertaking on the Capital Market wouldn't have come into force by then.

Reference in the law

Section 80e of the Securities Act

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

An announcement in the newspaper shall be published no later than nine days after the day when the issuer has been informed by the person who has acquired/disposed of voting rights about such a acquisition/disposal. The issuer will then publish the announcement without undue delay on its receipt in the Commercial Bulletin. The issuer is obliged to deliver evidence of the publication to the Commission and to organisers of markets without undue delay.

Effective from the 1st of May 2004 if the Bill of The Act on Undertaking on the Capital Market wouldn't come into force.

Reference in the law

Section 80e of the Securities Act

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

The Commission is empowered to impose corrective measures or sanctions in form of pecuniary punishment up to 20 mil. CZK on the investor or to publish the announcement about the determined infringement. According to The Bill of The Act on Undertaking on the Capital Market the Commission is empowered to impose corrective measures or sanction in form of pecuniary punishment up to 5 mil. CZK on the investor.

Reference in the law

Section 86 of the Securities Act

The Bill of The Act on Undertaking on the Capital Market

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?</p> <p><i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>The investor who has (either solely or jointly with other persons acting in concert) acquired a proportion of voting rights in the publicly traded company which enables him to control the company is obliged to announce a tender offer to all holders of the target company's participating securities within 60 days after a day following the acquisition. The same obligation arises to the investor whose proportion of voting rights has acquired or exceeded (solely or jointly with other persons acting in concert) two-thirds or three-quarters of the total voting rights in the company.</p> <p>A controlling person is a person who de facto or legally exercises, directly or indirectly, a decisive influence on the control or operation of another person's (party's) enterprise (hereafter "a controlled person"). A controlling person is particularly a person who is a majority shareholder (exercises more than 50% of voting rights in the company), who has at his disposal majority of voting rights on the basis of an agreement with another shareholder/s or who is capable to enforce an appointment, election or recall of the members of the statutory /supervisory body of the company. A person/persons acting in concert who has /have at his/their disposal at least 40% of the voting rights in a legal entity shall be deemed a controlling person /controlling persons unless it has been proved that other person has at its disposal the same or a higher percentage of voting rights in such legal entity.</p> <p>The investor could be required to announce a tender offer when he exceeds the threshold in other way than the acquisition of shares, i.e. as a result of change in the amount of voting rights when target company acquires its own shares, when he holds 40% of voting rights and other person, who has previously been a controlling person, cuts down his proportion of voting rights. On the other hand, SEC believes (although not expressly provided by law) that an impossibility of performance of voting rights e.g. as a result of sanction of suspension of voting rights does not increase other shareholder's proportion of voting rights and therefore the duty to announce a tender offer doesn't arise.</p> | |
| <p>Reference in the law</p> <p>Section 183b paragraph 1 of the Commercial Code</p> <p>Section 66a paragraph 2, 3 and 5 of the Commercial Code</p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|--|
| <p>The obligation to announce a tender offer shall not apply to:</p> <ol style="list-style-type: none"> 1) the legal successor of an investor who has entered into all his rights and obligations provided that the investor has already accomplished his duty to announce tender offer 2) persons acting in concert provided that their total proportion of voting rights in the company does not change and changes only occur in the internal structure or the number of persons acting in concert/persons forming concern has decreased 3) an investor (solely or together with persons acting in concert) provided that other shareholder (solely or together with other persons acting in concert) has at his disposal higher proportion of voting rights in the company 4) a controlling person who has undertaken to conclude an agreement with other shareholders to acquire their shares for compensation on their written request (on the basis of the contract on controlling) |
| <p>Reference in the law Section 183b paragraph 3 of the Commercial Code</p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|--|
| <p>In case of acquiring/ exceeding the threshold of voting rights which enables the investor to control the company or the threshold of two-thirds or three-quarters of the total voting rights in the company the investor is required to announce a tender offer to subscribe for the sale of all remaining shares. In case of voluntary tender offer (i.e. there is no obligation to announce a tender offer imposed on the investor according to law, articles of association or the decision of a public authority) an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares.</p> |
| <p>Reference in the law Section 183c paragraph 1 of the Commercial Code</p> |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| No | |
| Comments, if any | |
| A duty to deposit a reasonable advance payment on the bank account could be imposed by the supervisory authority (SEC). It is not required on regular bases. | |
| Reference in the law | |
| Section 183e paragraph 11 of the Commercial Code | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes | |
| Comments, if any The voluntary tender offer could be withdrawn only if expressly stipulated in its terms and only under the serious circumstances. The mandatory tender offer must not be withdrawn. The Commission is empowered to impose corrective measures or sanctions in form of pecuniary punishment up to 100 mil. CZK on the investor. | |
| Reference in the law Section 183a paragraph 5 of the Commercial Code Section 183c paragraph 11 of the Commercial Code Section 9 of the Czech Securities Commission Act | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|---|--|
| The voluntary tender offer could be modified only if it is expressly stipulated in its terms and under the serious circumstances until the first notice of acceptance. Such a restriction doesn't apply to increase in price (exchange ratio) or other changes of the conditions more favourable for shareholders. The mandatory tender offer may be changed only when the conditions are more favourable for the shareholders. Increase in price (or exchange ratio) applies also to previous acceptances. | |
| Reference in the law Section 183a paragraph 5 of the Commercial Code Section 183c paragraph 2 of the Commercial Code | |

How is the price in a tender offer established? Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any The price has to be equal for all shareholders who have identical interchangeable securities. | |
| Reference in the law Section 183a paragraph 4 letter c) of the Commercial Code | |

Is there a minimum price?

| | |
|---|--|
| Yes, for the mandatory tender offer | |
| If yes, how it is defined <i>(e.g. an average market price for a given period before the announcement)</i> ? The price in case of the mandatory tender offer must be <i>adequate</i> to the share value. It should reflect the six-month's average price of securities ("average price") and must not be lower than maximum price paid by the offeror within six month preceding the tender offer ("premium price"). The premium price can be decreased by up to 15 % but not below the average price. The offeror must submit an expert's valuation proving that the price is adequate. | |
| Reference in the law Section 183c paragraph 3 of the Commercial Code | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (e.g. over the last 12 months)?

| | |
|--|--|
| No | |
| Comments, if any If there is a premium price the price of shares must not be lower than the premium price decreased by up to 15 % but not below the average price (see above in section 7.2). | |
| Reference in the law Section 183c paragraph 3 of the Commercial Code | |

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|---|--|
| No | |
| Comments, if any The only restriction related to the price paid by the investor after the take over is that during the time when the tender offer is binding, the investor and persons acting in concert must not acquire or alienate options to the target company's participating securities, or conclude agreements on future contracts for alienation of the participating securities. | |
| Reference in the law Section 183a paragraph 12 letter c) of the Commercial Code | |

What kind of problems do you face in enforcement of takeovers regulations?

- 1) Problems with proving that persons who are neither personally nor proprietary connected are acting in concert.
- 2) Problems with the determination of the adequate price (including the extent of the supervisory authority of SEC as a regulator over an independent expert who has elaborated the expert's report and the data contained in the expert's report).

Do you think a seminar on takeovers should be organized?

| | |
|---|--|
| Yes | |
| If yes, what kind of issues should be presented? 1) The experience with proving that persons who are neither personally nor proprietary connected are acting in concert. 2) The methods of determining the adequate price (including the extent of the supervisory authority of SEC as a regulator over an independent expert and the data contained in the expert's report). | |

Egypt

| Jurisdiction | Name of authority |
|--------------|--------------------------------|
| Egypt | Capital Market Authority (CMA) |

Which authority is responsible for takeovers in your jurisdiction?

The Capital Market Authority

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/-CMA

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Reference in the law Article No. 8 of the Capital Market Law 95/1992 (attached) | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| shares |
| Reference in the law Article 59 of the Executive Regulations of Capital Market Law 95/1992 |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| Disclosure thresholds 5% to 15%. |
| Reference in the law Article 59 (paragraph 1-5) and Article 61 (paragraph 1) of the Executive Regulations of Law 95/1992 |

Whom the investor is obliged to inform and when?

| | |
|---|-------------------|
| supervisory authority | Deadline 2 weeks |
| exchange | Deadline one week |
| news agency | Deadline one week |
| a company | Deadline 2 weeks |
| Reference in the law Article 8 of the Law 95/1992, and Articles 59 and 61 of its Executive Regulations | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition |
| Reference in the law Article 59 (paragraph 1) of the Executive Regulations |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| In case of failure to disclose shareholding in listed companies, the transaction must be cancelled. |
| Reference in the law Article 8 of the Law 95/1992 |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) Company submits shareholding records to CMA according to the terms of the prospectus. Appointed staff from CMA-the supervisory authority are vested with judicial powers in order to have access to registers, books and documents in the company's office, stock exchange and other offices where these documents may exist. | |
| Reference in the law <i>Article 53 of the Executive Regulations and Article 49 of Law 95/1992</i> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| Employees Shareholders. |
| Reference in the law Chapter 8 Article 74 and 75 of the Law |

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|--|
| Yes | |
| Reference in the law Article 8 of the Law 95/1992 and article 59 of the Executive Regulations | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| Information given by the investor. |
| Reference in the law Article 8 of the Law 95/1992 and article 59 of the Executive Regulations |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| |
|---|
| Yes supervisory authority market other |
| Reference in the law <i>Article 8 of the Law 95/1992 and article 59 of the Executive Regulations</i> |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

| |
|--|
| The company shall inform shareholders within one week of receiving the acquisition notification. The company shall inform both the stock exchange and shareholders within one week of receiving the acquisition notification. |
| Reference in the law Article 8 of Law 95/1992 and article 59 of the executive regulations |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|--|
| Transaction is cancelled. |
| Reference in the law Article 8 of the Law |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes, starting 5% | |
| Reference in the law Article 59 of the Executive Regulations | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| | |
|--|--|
| The company is not obliged to announce a tender offer if the acquirer will exceed the threshold of 15%. Article 61 of the executive regulations set the obligation of disclosure to both the Capital Market Authority and the Stock Exchange on the acquirer in such case not the company. | |
| Reference in the law Articles 59, 60 and 61 of the Executive Regulations. | |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| | |
|--|--|
| Yes, in case of public offer, the investor can announce a tender offer to subscribe for the sale of a part of the remaining shares or all of them. | |
| Reference in the law Article 8 of the Law. | |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| No | |
| Comments, if any Investor has to submit a letter of guarantee through a bank. | |
| Reference in the law Capital Market Regulations concerning tender offers. | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|--|
| No | |
| Comments, if any According to Article 60 of the executive regulations if the transaction is not concluded due to reasons related to the acquirer's side he should notify the company within the week following expiry of the one month period allocated for execution of the transaction, and he shall bear the expenses incurred for notifying the shareholders of the transaction he intended to conclude. The acquirer also may link his offer to acquiring a minimum percentage of the company's shares and if the share offered for sale to him is less than such percentage he reserves the right not to conclude or withdraw his offer. | |
| Reference in the law Articles 60 and 62 of the Executive Regulations | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|---|--|
| The change can be done within one week. Each amendment will be considered as a new take-over bid. | |
| Reference in the law Article 61/A of the Executive Regulations | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Reference in the law Article 59 (paragraph 2) of the Executive Regulations | |

Is there a minimum price?

| | |
|---|--|
| Yes | |
| If yes, how it is defined <i>(e.g. an average market price for a given period before the announcement)</i> ? The transaction should be concluded at a price equal to the average of closing prices during the week preceding the notification or the offer price specified in his tender offer, whichever is higher. | |
| Reference in the law Articles 59 – 62 of the Executive Regulations. | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes | |
| Comments, if any Offerer can get what he needs at a price lower than that of two preceding tender offers. | |
| Reference in the law <i>Article 61/A of the Executive Regulations</i> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|--|--|
| No | |
| Comments, if any He should pay the entire price (100%). | |
| Reference in the law <i>Article 61/A of the Executive Regulations</i> | |

What kind of problems do you face in enforcement of takeovers regulations?

The Regulator has the power by law to enforce takeovers regulations and to make the investor pay on time.

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------|
| Yes | |
| If yes, what kind of issues should be presented? | |
| Evaluation | - Tactics |
| Rules and Regulations | - Market timing |
| Laws and Legislation | |

Hungary

| Jurisdiction | Name of authority |
|--------------|---|
| Hungary | Hungarian Financial Supervisory Authority |

Which authority is responsible for takeovers in your jurisdiction?

The Hungarian Financial Supervisory Authority is responsible for takeovers in Hungary.

What regulations address the problem of takeovers?

laws issued by President/Parliament
articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any Parties obtaining five per cent influence in a public limited company, followed by every additional five per cents (ten, fifteen, twenty per cent, etc.) shall report their influence to the Supervision and the Board of Directors of the company within two calendar days. The party obtaining influence shall also initiate the publication of a notice together with the notification. The notification must contain the following: (a) in the case of agreements containing acquisition or sales, and agreements the name, seat (address), company registration number of the parties participating in the agreement, b) the percentage of the influence achieved, c) the definition of the relationship specified in Article 65 Section (2), or the relationship between relations d) the date of acquisition and sales. | |
| Reference in the law Act CXX of 2001 on the Capital Market - Article 67 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|-------|
| votes |
|-------|

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|--|
| <i>Capital Market Act – Article 65, 67</i> |
|--|

What are disclosure thresholds?

(e.g. 5%, 10%)

Parties obtaining five per cent influence in a public limited company, followed by every additional five per cents (ten, fifteen, twenty per cent, etc.) shall report their influence to the Supervision and the Board of Directors of the company within two calendar days. The reporting obligation also applies if existing influence is reduced at similar rates. Following acquisitions resulting in fifty per cent influence, the reporting and publication obligation need to be completed again when seventy-five per cent or ninety per cent influence has been achieved. The articles of association of a public limited company may require that the notification and publication obligation also applies in the event of two per cent influenced gained or reduction of influence below two per cent.

Under the application of the CMA obtaining influence shall mean the following: obtaining voting rights to participate in decision-making at the general meeting of the company, including cases of exercising options to purchase, repurchase or purchase in the future shares involving voting rights, or exercising voting rights on the basis of usage or usufructuary rights, and cases in which the influence is not created as a result of the direct conduct of the person obtaining influence but originating from other conditions including especially inheritance, legal succession or a resolution of the company concerning the voting rights of shareholders, modifying the voting ratios, or the revival of voting rights.

Agreements between two shareholders of the same company shall also be considered obtaining influence, on the basis of which

- a) the shareholder is entitled to select or recall the majority of the leading company officials, and members of the supervisory board, or
- b) the parties undertake an obligation to control the company in accordance with the same criteria.

If participating interest is acquired in excess of the measure defined in Subsection (1) of Article 68 (i.e. 33% or in specific cases 25%):

- a) by any conduct other than an outright bid submitted by the buyer, or
 - b) by purchase option or repurchase option, or a call option on a forward purchase agreement,
 - c) within the framework of a procedure conducted by a government holding company as defined by law, or
 - d) under an agreement defined in Subsection (2) of Section 65,
- it shall be notified by the acquiring party in compliance with Subsection (1) of Section 67, with the percentage and title of acquisition of participating interest indicated, and shall be submitted for publication at the same time. The purchase offer shall be filed within fifteen days from the date of notification of the acquisition.

| |
|----------------------|
| Reference in the law |
|----------------------|

| |
|--|
| <i>Capital Market Act – Article 65, 67, 68</i> |
|--|

Whom the investor is obliged to inform and when?

| | |
|---|--|
| company other (HFSA, public disclosure) | Deadline: 2 calendar days Deadline: 2 calendar days |
| Comments, if any The party obtaining influence shall initiate the publication of a notice together with the notification. The publication shall be made in the company's paper for announcements and the official paper of the HFSA and, if there is such a thing, the company's homepage. The proposal for publication must be aimed at making sure that the publication is included in the next issue of the official paper of the company for announcements and the official paper of the stock exchange. | |
| Reference in the law <i>Capital Market Act – Article 66, 67</i> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| acquisition disposal |
| Reference in the law <i>Capital Market Act – Article 67</i> |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| A fine between 500 000 and 100 000 000 Hungarian forints. In the event that the notification and publication do not take place, no membership rights can be exercised towards the company until the notification obligation has been fulfilled. |
| Reference in the law <i>Capital Market Act – Article 67, 406</i> |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) Within the scope of its responsibilities, the HFSA is entitled to oversee and enforce the regulations and principles laid down in CMA concerning the acquisition of participating interests in public limited companies; The HFSA shall have powers to take measures in the case of any violation of the provisions laid down by CMA, in its resolution, as well as in the bylaws and internal regulations of the exchange, and in the standard service agreement and internal regulations of clearing corporations, and in the case of any conduct to the detriment of investors and other participants of the capital market, or aimed to upset the balance of the capital market. The HFSA shall order an issuer to submit specific data or information. | |
| Reference in the law <i>Capital Market Act – Article 378, 399, 400</i> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Agreements between two shareholders of the same company shall also be considered obtaining influence, on the basis of which

- a) the shareholder is entitled to select or recall the majority of the leading company officials, and members of the supervisory board, or
- b) the parties undertake an obligation to control the company in accordance with the same criteria.

As regards the acquisition of holding, direct and indirect acquisition of a major holding and the measure of holdings of close relatives shall be applied concurrently.

Influence also takes place if it occurs as a result of concerted activities of (independent) persons who do not have any relations with each other as specified above.

Reference in the law
Capital Market Act – Article 65

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Reference in the law
Capital Market Act – Article 67

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Investor is obliged to inform the Supervision and the Board of Directors of the company within two calendar days.

Reference in the law
Capital Market Act – Article 67

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| |
|---|
| Yes supervisory authority market (public disclosure) Comments, if any (is there any special procedure for providing such information) Parties obtaining five per cent influence in a public limited company, followed by every additional five per cents (ten, fifteen, twenty per cent, etc.) shall report their influence to the Supervision and the Board of Directors of the company within two calendar days. Same rules to be applied in the case of disposal of blocks of the shares of a given company. The party obtaining influence shall also initiate the publication of a notice together with the notification. The publication shall be made in the company's paper for announcements and the official paper of the stock exchange as well as the homepages of the stock exchange and, if there is such a thing, the company's homepage. The proposal for publication must be aimed at making sure that the publication is included in the next issue of the official paper of the company for announcements and the official paper of the stock exchange. Reference in the law Capital Market Act – Article 66, 67 |
|---|

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| A public company is obliged to inform about the investor's acquisition of substantial blocks of its shares within 2 calendar days. |
|--|

| |
|--|
| Reference in the law <i>Capital Market Act – Article 67</i> |
|--|

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|--|
| A fine between 500 000 and 100 000 000 Hungarian Forints. (1Euro equals to circa 254 Hungarian Forints, as of March 10, 2004) |
|--|

| |
|---|
| Reference in the law <i>Capital Market Act – Article 406</i> |
|---|

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>In public limited companies, obtaining influence over thirty-three per cent requires a public tender offer (hereinafter tender offer) which is to be approved by the Supervision in advance. If, with the exception of the shareholder intending to obtain influence in a public limited company, no other shareholders possess, either directly or indirectly, more than ten per cent of the voting rights, the public tender offer shall be mandatory already for obtaining more than twenty five per cent influence.</p> | |
| <p>Reference in the law <i>Capital Market Act – Article 68</i></p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>If as a result of the tender offer not all shares, forming the subject of the tender offer, are transferred, but the transferor has acquired influence to an extent specified in Article 68 Section (1) of the CMA (i.e. 33% or in specific cases 25%), the offeror does not need to make another tender offer for further acquisition. If the rate of influence acquired as a result of the tender offer is lower than the rate specified in Article 68 Section (1) of CMA, the offeror must make another tender offer for further acquisition, exceeding the rate specified in Article 68 Section (1).</p> |
| <p>Reference in the law <i>Capital Market Act – Article 78</i></p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

In the event that, as a result of the tender offer, the offerer has acquired more than ninety per cent of the voting rights, and has fully completed its obligation to provide the consideration, within thirty days the offerer shall have a right to purchase all the outstanding shares. With regard to exercising the purchase option, the consideration cannot be lower than the consideration applied in the tender offer.

If at the time of closing a tender offer procedure the offerer's influence remaining in the company exceeds more than ninety per cent of the voting right, upon the request of the holders of the outstanding shares, made within thirty days from the closing day of the period available for the acceptance of the tender offer, the offerer shall be obliged to purchase the outstanding shares as well.

Reference in the law

Capital Market Act – Article 76

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes

Comments, if any

A broker must be assigned to manage the acquisition based on a tender offer. The offerer and broker shall attach to the application submitted to the Supervision for the approval of the tender offer a certificate that the offerer has the relevant funds to provide the consideration for the acquisition of shares specified in the offer. The tender offer may be secured by

- a) cash,
- b) Hungarian government securities or securities issued by the OECD Member States,
- c) a bank guarantee issued by a credit institution having its registered seat in Hungary or another OECD Member State.

Reference in the law

Capital Market Act – Article 69

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| No | |
| Comments, if any A person who offers to conclude a contract shall be bound by his offer, unless the offer contained a clause to the contrary. | |
| Reference in the law <i>Civil Code – Article 211</i> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|--|--|
| Until the closing day of the period available for acceptance, the offerer may modify the tender offer concerning the consideration, providing that the modified figure, expressed in HUF, exceeds the figure included in the offer and the offerer publishes the modification. The modification of consideration also extends to declarations of acceptance made before the publication of modification. | |
| Reference in the law <i>Capital Market Act – Article 71</i> | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any The entity purchasing shares may differentiate the price or exchange parity only due to the rights attached to shares. No tender offer shall be phrased or arranged so as to contain or imply any discrimination relative to the declaration of acceptance in respect of shareholders. | |
| Reference in the law <i>Capital Market Act – Article 69</i> | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>In the tender offer, the consideration of shares representing the subject of the offer cannot be lower than</p> <p>a) in the event of shares listed at the stock exchange, the higher amount between the average stock exchange price of the shares weighted with the turnover of hundred and eighty days prior to the submission of the tender offer to the Supervision and the highest price of the transfer agreement concluded for the shares of the company for consideration within hundred and eighty days prior to the submission of the tender offer by related parties, or in the event that a purchase or repurchase option is called upon, the higher amount between the draw price of the contract and the total contractual fee,</p> <p>b) in the event of shares not listed at the stock exchange, the higher amount between the average stock exchange price of the shares weighted with the turnover of hundred and eighty days prior to the submission of the tender offer to the Supervision and the highest price of the transfer agreement concluded for the shares of the company for consideration within hundred and eighty days prior to the submission of the tender offer by related parties, or in the event that a purchase or repurchase option is called upon, the higher amount between the draw price of the contract and the total contractual fee.</p> <p>If the consideration for the shares cannot be established as described above, the consideration cannot be lower than the lowest amount specified in the tender offer and calculated on the basis of the calculation method approved by the Supervision.</p> | |
| <p>Reference in the law</p> <p><i>Capital Market Act – Article 72</i></p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|---|--|
| No | |
| <p>Comments, if any</p> <p>See answer to question 7.2</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

Acting in concert issues.
Verifying of the shareholders represented by nominees.

Do you think a seminar on takeovers should be organized?

| | |
|---|--|
| Yes | |
| If yes, what kind of issues should be presented? | |
| The following issues would be presented: Acting in concert | |

India

| Jurisdiction | Name of authority |
|--------------|--|
| India | Securities and Exchange Board of India |

Which authority is responsible for takeovers in your jurisdiction?

Securities and Exchange Board of India (SEBI)

What regulations address the problem of takeovers?

implementing regulations issued by Government/SEBI
Takeovers are regulated by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 {**Regulations**}

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any: Investors are required to inform about the acquisition on crossing 5%, 10%, 14% and every 2% purchase or sale after crossing 15% but subject to ceiling of 75%. In addition to this every person, including person acting in concert, who holds more than 15% shares/voting rights or promoters or persons in control over a company shall disclose their shareholding to the Target Company within 21 days from the financial year ending March 31. | |

Reference in the law: Regulation 7 and 8 of the Regulations

Regulation 7: {(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen per cent. shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.;}

{(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale alongwith the aggregate shareholding after such acquisition or sale}

{Explanation - for the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.}

(2) The disclosures mentioned in sub-regulation (1) [and (1A)] shall be made within {two days} of, -

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

{(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.}

(3) Every company, whose shares are acquired in a manner referred to in sub-regulation (1) [and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulation (1) [and (1A)].

Regulation 8 :

- (1) Every person, including a person mentioned in Regulation 6 who holds more than [fifteen] percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.
- (2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company .
- (3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.
- (4) Every company whose shares are listed on a stock exchange shall maintain a register in the specified format to record the information received under sub-regulation (3) of Regulation 6, sub-regulation (1) of Regulation 7 and sub-regulation (2) of Regulation 8.

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

votes

Reference in the law : Regulation 2(1)(k), 10 and 11 of Regualtions

Regulation 2(1)(k): "shares" means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights {but shall not include preference shares}.

Regulation 10 : No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

Regulation 11: (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15% or more but less than 75%] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5%] of the voting rights, {in any financial year ending on 31st March}, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2) [No acquirer, who together with persons acting in concert with him has acquired , in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations]

[(3) Notwithstanding anything contained in Regulations 10, 11 and 12, in case of disinvestment of a Public Sector Undertaking, an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:-

(i) both the acquirer and the seller are the same at all the stages of acquisition, and

(ii) disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of Regulation 18 and in the first public announcement.]

Explanation: For the purposes of Regulation 10 and Regulation 11, acquisition shall mean and include,-

(a) direct acquisition in a listed company to which the Regulations apply;

(b) indirect acquisition by virtue of acquisition of {***} companies, whether listed or unlisted, whether in India or abroad.

What are disclosure thresholds?
(e.g. 5%, 10%)

Investors are required to inform about the acquisition on crossing 5%, 10%, 14% and every 2% purchase or sale after crossing 15% till consolidating 75%.

Reference in the law : Regulation 7 of the Regualtions as detailed at query 1 under the heading ‘Investors Disclosure Obligation’.

Whom the investor is obliged to inform and when?

| | |
|--|--|
| exchange a company | Deadline: Within two days of purchase of Shares Deadline: Within two days of purchase of Shares |
| Reference in the law Regulation 7(1), (1A), &7(2) of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Comments, if any : Below 15% reporting is to be done for acquisition only however, beyond 15% but upto 75% both acquisition and disposal beyond 2% is to be reported. |
| Reference in the law: Regulation 7 of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| Adjudication proceedings for imposing monetary penalty are initiated against the erring investor under section 15A(b) of SEBI Act, 1992. |
| Reference in the law : Section 15A(b) of SEBI Act, 1992 Section 15A : If any person, who is required under this Act or any rules or regulations made thereunder- (a)... (b) to file any return or furnish any information books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues; a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less. |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|--|
| Yes | |
| <p>Comments, if any (what would be the procedure for verification of such shareholding):</p> <p>Regulator (SEBI) can call for information from stock exchanges and company regarding disclosures made under Regulation 6, 7 or 8 as and when required by Board.</p> | |
| <p>Reference in the law : Regulation 8(4) and 9 of Regulations.</p> <p>Regulation 8(4) : Every company whose shares are listed on a stock exchange shall maintain a register in the specified format to record the information received under sub-regulation (3) of Regulation 6, sub-regulation (1) of Regulation 7 and sub-regulation (2) of Regulation 8.</p> <p>Regulation 9 : The stock exchanges and the company shall furnish to the Board information with regard to the disclosures made under Regulations 6, Regulation 7 and Regulation 8 as and when required by the Board.</p> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| <p>Definition of acquirer includes person acting in concert with him. Person acting in concert is also defined in the regulations. Further, in the disclosures made to the company and stock exchanges, as required under regulation 7, the holding of the person acting in concert shall also be disclosed.</p> |
| <p>Reference in the law : Regulation 2(1)(b) and 2(1)(e) of the Regulations.</p> <p>Regulation 2(1)(b) : "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;</p> |

Regulation 2(1)(e) : (e) "person acting in concert" comprises, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

- i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;
- ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;
- iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;
- iv) mutual fund with sponsor or trustee or asset management company;
- v) foreign institutional investors with sub account(s);
- vi) merchant bankers with their client(s) as acquirer;
- vii) portfolio managers with their client(s) as acquirer;
- viii) venture capital funds with sponsors;
- ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer. Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.

Note: For the purposes of this clause 'associate' means:

- (a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
- (b) family trusts and Hindu Undivided Families.

Public company disclosure obligations*(disclosure of shareholders of publicly traded companies)*

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes <input type="checkbox"/> | |
| Comments, if any : Acquirers are required to inform the target company on crossing the threshold limits prescribed in the Regulations with in 2 days. | |
| Reference in the law : Reg. 7(1), & 7(1A) of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| Acquirers are required to disclose their shareholdings to the target company on crossing certain threshold limits provided in Regulation 7. Further, Target Company can also seek details regarding their shareholding pattern from the registrar of the Company and Depositories. |
| Reference in the law : Regulation 7 of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|--|
| Yes other | |
| Comments, if any (is there any special procedure for providing such information) | |
| Target companies are required to inform stock exchanges within seven days of receipt of information from investors. | |
| Reference in the law : Regulation 7(3) of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

| |
|---|
| Within seven days of receipt of information of investor. |
| Reference in the law : Regulation 7(3) of the Regulations as detailed at query 1 under the heading 'Investors Disclosure Obligation'. |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Adjudication proceedings for imposing monetary penalty may be initiated against the investor for failure to disclose information regarding acquisition of substantial blocks of its shares.

Reference in the law : Section 15A(b) of the SEBI Act, 1992 {Act}.

Section 15A : If any person, who is required under this Act or any rules or regulations made thereunder-

(a)...

(b) to file any return or furnish any information books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues; a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

If pre shareholding of acquirer is less than 15% then when he exceeds 15% threshold then he is required to make an open offer.

If pre shareholding of acquirer is between 15% and 75% then when he exceeds 5% threshold in any financial year then he is required to make an open offer.

If pre shareholding of acquirer is 75% or more then when he acquires even one share then he is required to make an open offer.

If acquirer acquires control with or without acquisition of shares then he is required to make an open offer.

{“Shares” means shares in the share capital of a company carrying voting rights and security which would entitle the holder to receive shares with voting rights (but shall not include preference shares)}

Reference in the law : Regulation 10, Regulation 11, and Regulation 12 of the Regulations.

Regulation 10 : Details provided on page 4.

Regulation 11 : Details provided on page 4.

Regulation 12 : Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the Regulations.

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a {special resolution} passed by the shareholders in a general meeting.

{Provided further that for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 shall also be provided.}

{Explanation.- For the purposes of this Regulation, acquisition shall include direct or indirect acquisition of control of target company by virtue of acquisition of companies, whether listed or unlisted and whether in India or abroad.}

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

In case of acquisitions as detailed in regulation 3 e.g. acquisition through Initial Public offerings, acquisition through rights issue, interse transfers among promoters, relatives, group companies etc the exemption is available to acquirer subject to fulfilment of certain conditions.

Reference in the law : Regulation 3 of the Regulations.

3 (1) Nothing contained in Regulations 10, Regulation 11 and Regulation 12 of these Regulations shall apply to :

(a) allotment in pursuance of an application made to a public issue.

Provided that if such an allotment is made pursuant to a firm allotment in the public issues, such allotment shall be exempt only if full disclosures are made in the prospectus about the identity of the acquirer who has agreed to acquire the shares, the purpose of acquisition, consequential changes in voting rights, shareholding pattern of the company and in the Board of Directors of the Company, if any, and whether such allotment would result in change in control over the company.

(b) allotment pursuant to an application made by the shareholder for rights issue,

(i) to the extent of his entitlement; and

(ii) upto the percentage specified in Regulation 11.

Provided that the limit mentioned in sub-clause (ii) will not apply to the acquisition by any person presently in control of the company and who has in the rights letter of offer made disclosures that they intend to acquire additional shares beyond their entitlement if the issue is undersubscribed.

Provided further that this exemption shall not be available in case the acquisition of securities results in the change of control of management.

(c) {Omitted}

(d) allotment to the underwriters pursuant to any underwriting agreement;

(e) inter se transfer of shares amongst :-

(i) {group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company.}

(ii) relatives within the meaning of Section 6 of the Companies Act, 1956 (1 of 1956) ;

iii) (a) Indian promoters and foreign collaborators who are shareholders;

(b) Promoters.

{Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition}

{(iv) the acquirer and persons acting in concert with him, where such transfer of shares takes place three years after the date of closure of the public offer made by them under these Regulations.}

{Explanation .-

(1) The exemption under sub-clause (iii) and (iv) shall not be available if inter se transfer of shares is at a price exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of regulation 20.;

2. The benefit of availing exemption under this clause, from applicability of the Regulations for increasing shareholding or *inter se* transfer of shareholding-shall be subject to such transferor(s) and transferee(s) having complied with Regulation 6, Regulation 7 and Regulation 8.}

(f) acquisition of shares in the ordinary course of business by,-

i) a registered stock-broker of a stock exchange on behalf of clients;

ii) a registered market maker of a stock exchange in respect of shares for which he is the market maker, during the course of market making;

iii) by Public Financial Institutions on their own account;

iv) by banks and public financial institutions as pledgees;

{(v) the International Finance Corporation, Asian Development Bank, International Bank for Reconstruction and Development, Commonwealth Development Corporation and such other international financial institutions,

(vi) a merchant banker or a promoter of the target company pursuant to a scheme of safety net under the provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 in excess of limit specified in sub-regulation (1) of Regulation 11.;

{(ff) acquisition of shares by a person in exchange of shares received under a public offer made under these Regulations.;

(g) acquisition of shares by way of transmission on succession or inheritance;

(h) acquisition of shares by government companies within the meaning of Section 617 of the Companies Act, 1956 (1 of 1956) and statutory corporations;

Provided that this exemption shall not be applicable if a Government company acquires shares or voting rights or control of a listed Public Sector Undertaking through the competitive bidding process of the Central Government {or the State Government as the case may be } for the purpose of disinvestment.

(i) transfer of shares from state level financial institutions, including their subsidiaries, to co-promoter(s) of the company {or their successors or assignee(s) or an acquirer who has substituted an erstwhile promoter} pursuant to an agreement between such financial institution and such co-promoter(s);

(ia) transfer of shares from venture capital funds or foreign venture capital investors registered with the Board to promoters of a venture capital undertaking or venture capital undertaking pursuant to an agreement between such venture capital fund or foreign venture capital investors with such promoters or venture capital undertaking.

(j) pursuant to a scheme - (i) framed under Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985;

(ii) of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign.

(k) acquisition of shares in companies whose shares are not listed on any stock exchange;

Explanation: The exemption under clause (k) above shall not be applicable if by virtue of acquisition or change of control of any unlisted company, whether in India or abroad, the acquirer acquires shares or voting rights or control over a listed company.

(l) {***} other cases as may be exempted from the applicability of Chapter III by the Board under Regulation 4.

(2) Nothing contained in Chapter III of the Regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts so long as they are not converted into shares carrying voting rights.

(3) In respect of acquisitions under clauses {***},(e),(h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding [5%] of the voting share capital of the company.

(4) In respect of acquisitions under clauses (a),(b), {***},(e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report alongwith supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise [15%] or more of the voting rights in a company.

{Explanation - For the purposes of sub-regulations (3) and (4), the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities}

(5) The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of Rs.10,000/- to the Board, either by a bankers cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Investors are allowed to announce a tender offer for minimum 20% of the voting capital of the company.

Reference in the law : Regulation 21(1) of the Regulations.

Regulation 21(1) : The public offer made by the acquirer to the shareholders of the target company shall be for a minimum twenty per cent of the voting capital of the company} ;

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Comments, if any ; The acquirer shall as and by way of security for performance of his obligation under the regulations deposit in an escrow account such sum calculated in the following manner:

For consideration payable under the public offer-

Upto and including Rs 100 crore – 25%

Exceeding Rs 100 crore – 25% upto Rs 100 crore and 10% thereafter.

The escrow account referred above shall consist of:

cash deposit with a scheduled commercial bank or

bank guarantee in favour of the merchant banker; or

deposit of acceptable securities with appropriate margin, with the merchant banker;

Reference in the law : Regulation 28 of the Regulations.

Regulation 28. (1) The acquirer shall as and by way of security for performance of his obligations under the Regulations, deposit in an escrow account such sum as specified in sub-regulation(2).

(2) The escrow amount shall be calculated in the following manner, -

For consideration payable under the public offer, -

upto and including Rs.100 crores - 25%;

exceeding Rs.100 crores - 25% upto Rs.100 crores and 10% thereafter.

(b) For offers which are subject to a minimum level of acceptance, and the acquirer does not want to acquire a minimum of 20%, then 50% of the consideration payable under the public offer in cash shall be deposited in the escrow amount.

(3) The total consideration payable under the public offer shall be calculated assuming full acceptances and at the highest price if the offer is subject to differential pricing, irrespective of whether the consideration for the offer is payable in cash or otherwise.

(4) The escrow account referred in sub-regulation (1) shall consist of, -

cash deposited with a scheduled commercial bank ; or

bank guarantee in favour of the merchant banker; or

deposit of acceptable securities with appropriate margin, with the merchant banker; or

cash, deposited with a scheduled commercial bank in case of clause (b) of sub-regulation (2) of this Regulation.

(5) Where the escrow account consists of deposit with a scheduled commercial bank, the acquirer shall, while opening the account, empower the merchant banker appointed for the offer to instruct the bank to issue a banker's cheque or demand draft for the amount lying to the credit of the escrow account, as provided in the Regulations.

(6) Where the escrow account consists of bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid atleast for a period commencing from the date of public announcement until 30 days after the closure of the offer.

(7) The acquirer shall, in case the escrow account consists of securities empower the merchant banker to realise the value of such escrow account by sale or otherwise provided that if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.

(8) In case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till after completion of all obligations under the Regulations.

(9) In case there is any upward revision of offer, consequent upon a competitive bid or otherwise, the value of the escrow account shall be increased to equal at least 10% of the consideration payable upon such revision.

(10) Where the escrow account consist of bank guarantee or deposit of approved securities, the acquirer shall also deposit with the bank a sum of at least 1% of the total consideration payable, as and by way of security for fulfillment of the obligations under the Regulations by the acquirers.

(11) The Board shall in case of non-fulfillment of obligations under the Regulations by the acquirer forfeit the escrow account either in full or in part.

{(11A) In case of failure by the acquirer to obtain shareholders' approval required under sub-regulation (3) of regulation 20, the amount in escrow account may be forfeited.}

(12) The escrow account deposited with the bank in cash shall be released only in the following manner, -

the entire amount to the acquirer upon withdrawal of offer in terms of Regulation 27 upon certification by the merchant banker;

for transfer to the special account opened in terms of sub-regulation (1) of Regulation 29.

Provided the amount so transferred shall not exceed 90% of the cash deposit made under clause (a) of sub-regulation (2) of this regulation.

to the acquirer, the balance of 10% of the cash deposit made under clause (a) of sub-Regulation (2) of this Regulation or the cash deposit made under sub-Regulation {(10)} of this Regulation, on completion of all obligations under the Regulations, and upon certification by the merchant banker;

the entire amount to the acquirer upon completion of all obligations under the Regulations, upon certification by the merchant banker, where the offer is for exchange of shares or other secured instruments;

the entire amount to the merchant banker, in the event of forfeiture for non-fulfillment of any of the obligations under the Regulations, for distribution among the target company, the regional stock exchange and to the shareholders who had accepted the offer in the following manner, after deduction of expenses, if any, of the merchant banker and the registrars to the offer, -

one third of the amount to the target company;

one third of the amount to the regional stock exchange for credit of the investor protection fund or any other similar fund for investor education, research, grievance redressal and similar such purposes as may be specified by the Board from time to time;

residual one third to be distributed pro-rata among the shareholders who have accepted the offer.

(13) In the event of non-fulfillment of obligations by the acquirer, the merchant banker shall ensure realisation of escrow amount by way of foreclosure of deposit, invocation of bank guarantee or sale of securities and credit proceeds thereof to the regional stock exchange of the target company, for the credit of the Investor Protection Fund or any other similar fund.

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|--|
| Yes | |
| Comments, if any ; Regulations provide certain circumstances for withdrawal like refusal of statutory approvals, death of sole acquirer etc. | |
| Reference in the law : Regulation 27 of the Regulations. Regulation 27. (1) No public offer, once made, shall be withdrawn except under the following circumstances : - {omitted} the statutory approval(s) required have been refused; the sole acquirer, being a natural person, has died; such circumstances as in the opinion of the Board merits withdrawal. (2) In the event of withdrawal of the offer under any of the circumstances specified under sub-regulation (1), the acquirer or the merchant banker shall : make a public announcement in the same newspapers in which the public announcement of offer was published, indicating reasons for withdrawal of the offer. simultaneously with the issue of such public announcement, inform - (i) the Board; (ii) all the stock exchanges on which the shares of the company are listed; and (iii) the target company at its registered office. | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|---|
| Acquirer can revise upward the price, size and mode of payment upto 7 working days prior to the closure of offer. In case of revision of mode of payment the amount to be paid as mentioned in the first offer cannot be reduced. |
|---|

Reference in the law : Regulation 20(2),25(6) and 26 of the Regulations.

Regulation 20(2) : The offer price shall be payable -

- (a) in cash ;
- (b) by issue, exchange and, or transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or
- (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum 'A' grade rating from a credit rating agency registered with the Board;
- (d) a combination of clause (a),(b) or (c) :

Provided that where the payment has been made in cash to any class of shareholders for acquiring their shares under any agreement or pursuant to any acquisition in the open market or in any other manner during the immediately preceding twelve months from the date of public announcement, the letter of offer shall provide an option to the shareholders to accept payment either in cash or by exchange of shares or other secured instruments referred to above:

Provided further that the mode of payment of consideration may be altered in case of revision in offer price or size subject to the condition that the amount to be paid in cash as mentioned in any announcement or the letter of offer is not reduced.

Regulation 25(6) : The acquirers who have made the public announcement of offer(s) including the public announcement of competitive bid(s) {***} shall have the option to make upward revisions in his offer(s), in respect to the price and the number of shares to be acquired, at any time upto seven working days prior to the date of closure of the offer.

Provided that the acquirer shall not have the option to change any other terms and conditions of their offer {except the mode of payment following an upward revision in offer}.

Provided further that any such upward revision shall be made only upon the acquirer, -

making a public announcement in respect of such changes or amendments in all the newspapers in which the original public announcement was made;

simultaneously with the issue of public announcement referred in clause (a), informing the Board, all the stock exchanges on which the shares of the company are listed, and the target company at its registered office;

increasing the value of the escrow account as provided under sub-regulation (9) of Regulation 28.

Regulation 26 : Irrespective of whether or not there is a competitive bid, the acquirer who has made the public announcement of offer, may make upward revisions in his offer in respect to the price and the number of shares to be acquired, at anytime upto seven working days prior to the date of the closure of the offer.

Provided that any such upward revision of offer shall be made only upon the acquirer -

making a public announcement in respect of such changes or amendments in all the newspapers in which the original public announcement was made;

simultaneously with the issue of such public announcement, informing the Board, all the stock exchanges on which the shares of the company are listed, and the target company at its registered office.

increasing the value of the escrow account as provided under sub-regulation (9) of Regulation 28.

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|--|
| Yes | |
| Comments, if any : The offer price shall not be lower than the price determined as per parameters given in sub regulation (4) and (5) of Regulation 20. | |
| Reference in the law : Regulation 20 | |
| Regulation 20(1) : The offer to acquire shares under regulations 10,11 or 12 shall be made at a price not lower than the price determined as per sub-regulations (4) and (5). | |
| Regulation 20(4): For the purposes of sub-regulation (1), the offer price shall be the highest of - | |
| (a) the negotiated price under the agreement referred to in sub- regulation (1) of regulation 14; | |
| (b) price paid by the acquirer or persons acting in concert with him for acquisition, if any, including by way of allotment in a public or rights or preferential issue during the twenty six week period prior to the date of public announcement, whichever is higher; | |

(c) the average of the weekly high and low of the closing prices of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the twenty six weeks or the average of the daily high and low of the closing prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the date of public announcement, whichever is higher.

{Provided that the requirement of average of the daily high and low of the closing prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the date of public announcement, shall not be applicable in case of disinvestment of a Public Sector Undertaking.}

Explanation:

In case of disinvestment of a Public Sector Undertaking, the relevant date for the calculation of the average of the weekly {*** } prices of the shares of the Public Sector Undertaking, as quoted on the stock exchange where its shares are most frequently traded, shall be the date preceding the date when the Central Government or the State Government opens the financial bid.

Regulation 20(5): Where the shares of the target company are infrequently traded, the offer price shall be determined by the acquirer and the merchant banker taking into account the following factors:

(a) the negotiated price under the agreement referred to in sub- regulation (1) of regulation 14;

(b) the highest price paid by the acquirer or persons acting in concert with him for acquisitions, if any, including by way of allotment in a public or rights or preferential issue during the twenty six week period prior to the date of public announcement;

(c) other parameters including return on networth, book value of the shares of the target company, earning per share, price earning multiple *vis-a-vis* the industry average:

Provided that where considered necessary, the Board may require valuation of such infrequently traded shares by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant of minimum ten years' standing or a public financial institution.

Explanation :-

For the purpose of sub-regulation (5), shares shall be deemed to be infrequently traded if on the stock exchange, the annualised trading turnover in that share during the preceding six calendar months prior to the month in which the public announcement is made is less than five per cent. (by number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the said six months period may be taken.

In case of disinvestment of a Public Sector Undertaking, the shares of such an undertaking shall be deemed to be infrequently traded, if on the stock exchange, the annualised trading turnover in the shares during the preceding six calendar months prior to the month, in which the Central Government or the State Government as the case may be opens the financial bid, is less than five per cent. (by the number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the six months period may be taken.

(iii) In case of shares which have been listed within six months preceding the public announcement, the trading turnover may be annualised with reference to the actual number of days for which the shares have been listed

Is there a minimum price?

| | |
|---|--|
| Yes | |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>Minimum offer price is determined by , inter alia, taking into account the following parameters: Negotiated price</p> <p>Price paid by acquirer for acquisition by way of allotment in public or rights issue or preferential issue during 26 weeks period prior to the date of public announcement.</p> <p>In case of frequently traded shares, average of weekly high and low prices during twenty six weeks or the average of daily high and low prices during the two weeks preceding the date of public announcement, whichever is higher.</p> <p>In case of infrequently traded shares, other parameters including return on networth, book value, earnings per share, price earning multiple vis-a vis the industry average.</p> | |
| <p>Reference in the law : Regulation 20 (4) and (5) of the Regulations as detailed at query 7.1 under the headng 'Tender Offer'.</p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| No | |
| <p>Comments, if any : The offered price cannot be lower than the maximum price paid by an offeror in a preceding period during 26 weeks period prior to the date of public announcement.</p> | |
| <p>Reference in the law : Regulation 20 of the Regulations as detailed at query 7.1 under the headng 'Tender Offer'.</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|--|--|
| Yes | |
| Comments, if any : Acquirer who has made a public offer and seeks to acquire further shares shall not acquire further shares during the period of 6 months from the date of public offer at a price higher than the offer price. | |
| Reference in the law : Regulation 20A(1) of the Regulations. Regulation 20 A(1): An acquirer who has made a public offer and seeks to acquire further shares under sub-regulation (1) of regulation 11 shall not acquire such shares during the period of 6 months from the date of closure of the public offer at a price higher than the offer price. (2) Sub-regulation (1) shall not apply where the acquisition is made through the stock exchanges.} | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---|
| Establishing Person acting in concert and change in control in cases of informal agreements. Establishing change in control/ indirect change in control over Indian Target Company pursuant to the global restructuring/arrangements under foreign laws. Enforcing directions including to make open offer, payment of penalties for non compliances etc. Difficulties in obtaining information from regulated/non regulated entities for confirming the veracity of the alleged non-compliance/violation. |
|---|

Do you think a seminar on takeovers should be organized?

| | |
|---|--|
| Yes | |
| If yes, what kind of issues should be presented? Issues relating to establishing Person acting in concert and change in control in cases of informal agreements. Issues relating establishing change in control/ indirect change in control over Indian Target Company pursuant to the global restructuring/arrangements under foreign laws. Better regulatory enforcement of Takeover | |

Jordan

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| Jordan | Jordan Securities Commission (JSC) |

Which authority is responsible for takeovers in your jurisdiction?

The JSC is the responsible authority for takeovers in Jordan

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC
self-regulation issued by the market
articles of the given company approved by shareholders

Investor disclosure obligations
(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|-----------------------------|
| Yes | No <input type="checkbox"/> |
| Investors who own or have at their disposal 5% or more of the securities of one issuing company, shall inform the JSC in writing within one week as of the occurrence of such, and shall also inform the JSC in writing of any change thereon as of the occurrence of such change. It is the responsibility of the issuing company to inform the JSC and disclose promptly and without any delay, any changes in the ownership of the company's shares which result in a change in the control of the company. | |
| Reference in the law Instructions of Disclosure and Auditing and Accounting Standards – Articles (10/a/5) and (23). | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| shares votes |
| The announcement requirements are related to the number of shares. Securities traded on the Amman Stock Exchange (ASE) count for one vote/share owned. |
| Reference in the law Instructions of Disclosure and Auditing and Accounting Standards – Article (23) |

What are disclosure thresholds?
(e.g. 5%, 10%)

The disclosure threshold is 5%

Whom the investor is obliged to inform and when?

| | |
|---|---------------------------------|
| supervisory authority | Deadline <u>Within one week</u> |
| exchange | Deadline _____ |
| news agency | Deadline _____ |
| a company | Deadline _____ |
| other | Deadline _____ |
| Please see answer 1.1 | |
| Instructions of Disclosure and Auditing and Accounting Standards – Article (23) | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition |
| disposal |
| both |
| Please see answer 1.1 |
| Reference in the law Instructions of Disclosure and Auditing and Accounting Standards – Articles (10) & (23) |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| If the person fails to disclose shareholdings in listed companies the JSC may impose monetary fines of no more than JD 50000 (US \$1 = JD 0.709). The competent court may impose a fine of no more than JD 100,0000 |
| Reference in the law Securities Law – Articles (21), (22) and (110/A). |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| Reference in the law | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal as to the company which shares are acquired*)?

The JSC is currently working on drafting a number of regulations, including regulations for tender offers and take over bids that will elaborate all relevant details.

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|-----------------------|----|
| Yes | No |
| Please see answer I.8 | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The main source is the company's records. Also, the data is available with the JSC since investors who own or have at their disposal 5% or more of the securities of one issuing company, should inform the JSC in writing within one week as of the occurrence of such, and should also inform the JSC in writing of any change thereon as of the occurrence of such change.

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|-----------------------------|
| Yes supervisory authority market investors other | No <input type="checkbox"/> |
| Please see answer 1.1 | |
| Reference in the law Instructions of Disclosure and Auditing and Accounting Standards – Article (10/a/5) | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(*e.g. what is the deadline of informing supervisory body and/or the market about acquisition?*)

Any issuing company shall, and without delay, and through any means that achieves the required urgency, inform the JSC of, and promptly announce or declare upon the occurrence of changes in the ownership of the company's shares which result in a change in the control thereof.

| |
|--|
| Reference in the law Instructions of Disclosure and Auditing and Accounting Standards – Articles (10/a/5) |
|--|

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|-----------------------|
| Please see answer 1.6 |
|-----------------------|

| |
|---|
| Reference in the law Securities Law – Articles (18), (19) (20),(21),(22) and (110) |
|---|

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
|--|-----------------------------|
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?</p> <p><i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>No person shall publicly bid to purchase, or acquire by exchange, more than 40% of a Public Issuer's securities except by means of a Public Take-over Bid. A Public Take-over Bid to purchase or exchange any securities is deemed to be an offer to all owners of such securities. Any person who makes a Public Take-over Bid shall pay any owner of securities that are subject to the offer, who offers to sell such securities, the highest price paid to any other seller of such securities, without discrimination. If the number of securities offered for sale or exchange by owners to the person who makes the Public Take-over Bid is higher than the number of securities that the person intends or commits to buy or exchange, then the purchase or exchange shall be from all owners who offer to sell or exchange, in the proportion of the securities offered for sale or exchange to the total securities demanded for purchase or exchange.</p> | |
| Reference in the law Securities Law – Article (45) | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Please see answer I.8

Reference in the law

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Please see answer I.8

Reference in the law

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☐

No ☐

Please see answer I.8

Reference in the law

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Yes ☐

No ☐

Please see answer I.8

Reference in the law

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?
(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Please see answer I.8

Reference in the law

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes | No <input type="checkbox"/> |
| Any person who makes a Public Take-over Bid shall pay any owner of securities that are subject matter of the offer, who offers to sell such securities, the highest price paid to any other seller of such securities, without discrimination. | |
| Reference in the law Securities Law – Article (45) | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes | No <input type="checkbox"/> |
| Please answer 7.1 | |
| Reference in the law Securities Law – Article (45) | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Please see answer I.8 | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Please see answer I.8 | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|------------|
| No answer. |
|------------|

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes | No <input type="checkbox"/> |
| <p>We suggest the following themes:</p> <p>Legal issues of tender offers and take-over bids</p> <p>Capital groups, regulation and practice</p> <p>Mergers and Acquisitions</p> | |

Korea

| Jurisdiction | Name of authority |
|--------------|--|
| Korea | Financial Supervisory Commission (FSC) / Financial Supervisory Service (FSS) |

Which authority is responsible for takeovers in your jurisdiction?

FSC/FSS

What regulations address the problem of takeovers?

Laws issued by the President/Parliament
Implementing regulations issued by the Government/SEC
Self-regulation issued by the market

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any Any person (and specially related persons) who acquires or holds 5% or more of the voting shares of a public company shall report their holdings to the Financial Supervisory Commission (FSC) and the Korea Stock Exchange (KSE) or the Korea Securities Dealers Association (KSDA) and any changes in holdings that exceeds 1% of the total number of shares of the public company within five days from the day on which that person comes to hold such shares. Any person who holds 10% or more of the total number of shares of a public company shall report any changes in their holdings to the FSC and the KSE or the KSDA by the 10th day of the following month (within 10 days for new acquisitions). | |
| Reference in the law Securities and Exchange Act, Article 200-2, 188 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|--|
| shares votes |
| Comments, if any 5% rule relates to votes, but 10% rule relates to shares |
| Reference in the law Securities and Exchange Act, Article 200-2, 188 |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| 5%, 10% |
| Reference in the law Securities and Exchange Act, Article 200-2, 188 |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority exchange | Deadline 5 days for 5% rule / by the 10th day of the following month (within 10 days for new acquisitions) for 10% rule Deadline 5 days for 5% rule / by the 10th day of the following month (within 10 days for new acquisitions) for 10% rule |
| Reference in the law Securities and Exchange Act, Article 200-2, 188 | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Reference in the law Securities and Exchange Act, Article 200-2, 188 |

What is the sanction in case of failure to disclose shareholding in listed companies?

Possible sanctions for failure to disclose shareholding are as follows ;
An advisory opinion for the removal of officers, a warning or caution, imprisonment of one year or less or a fine of five million won or less.

In case of failure of 5% rule, restriction on the exercise of voting rights and FSC's order to sell the shares

Reference in the law

Securities and Exchange Act, Article 200-3, 200-4, 210

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes

Comments, if any (what would be the procedure for verification of such shareholding)

If it is deemed necessary to protect public interests or investors, the FSC may order the company that has issued shares, etc. and other persons to file a report or to submit materials for reference, or have the FSS Governor investigate accounting records, documents and other materials.

Reference in the law

Securities and Exchange Act, Article 200-2

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Market participants acting in concert are required to file a report concerning their shareholdings if they hold 5% or more voting shares of a public company.

Reference in the law

Securities and Exchange Act, Article 200-2

Enforcement Decree of the Securities and Exchange Act, Article 10-3

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes ☐

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Because shareholders are not required to report their stock transactions to the issuing company, the company only receives information regarding the acquisition/disposal of shares through the internet-based disclosed reports required of persons who acquire or hold 5% or more voting shares of a public company.

Reference in the law
Securities and Exchange Act, Article 200-2, 188

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

Yes

☒ market

Comments, if any (is there any special procedure for providing such information)

When there is a change in the shareholdings of the largest shareholder of a public company, the public company shall file a report about the acquisition/disposal of shares.

Reference in the law
Listing Regulation of the KSE, Article 26

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

The public company shall inform the market without any delay.

Reference in the law
Listing Regulation of the KSE, Article 26

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

None

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>When a shareholder holds 5% of the total number of votes/shares after the purchase of shares from more than 10 persons within a 6 month-period out of the public securities market.</p> | |
| <p>Reference in the law Securities and Exchange Act, Article 21</p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|--|
| <p>The company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares in the following cases, when (1) the purchase is made in the public securities market, (2) the number of shareholders is less than 10 within a six month period, (3) the purchase of shares is made for retirement, in response to the exercise of the appraisal rights of shareholders, from related persons, or by the exercise of the shareholder's preemptive rights or the right to demand the conversion or exchange of shares or bonds, etc.</p> |
| <p>Reference in the law Enforcement Decree of the Securities and Exchange Act, Article 11</p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|--|
| <p>An investor is allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares. The number of shares through a tender offer has no restraints but the reduction of that once announced is not allowed.</p> |
| <p>Reference in the law Securities and Exchange Act, Article 21, 23-2</p> |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|---|--|
| Yes | |
| Comments, if any A tender offer statement shall be accompanied by documents that verify the balance of accounts at financial institutions or the holding of other funds, which meet the amount necessary for the tender offer. | |
| Reference in the law Enforcement Decree of the Securities and Exchange Act, Article 11-4 | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|--|
| Yes | |
| Comments, if any A tender offer can only be withdrawn after a counter tender offer is made or if the tender offeror falls under death, dissolution, bankruptcy, etc. Possible sanctions for wrongful withdrawal are as follows; An advisory opinion for the removal of officers, a warning or caution, imprisonment for 5 year or less or a fine of 30 million won or less. a civil penalty of up to 3% of the total amount of the tender offer as stated in the tender offer statement. | |
| Reference in the law Securities and Exchange Act , Article 20, 24-2, 206-3, 207-3, 210 Enforcement Decree of the Securities and Exchange Act, Article 12-7 | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer cannot be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|---|--|
| The tender offeror must file an amendment statement before the date on which the tender offer expires to modify the terms for purchase, however a reduction of the purchase price, a decrease in the number of shares intended to be purchased, an extension of payment period for purchase and other purchase conditions adverse to stockholders are not permitted. A stockholder who accepts an offer to buy shares or makes an offer to sell, may cancel at any time during the tender offer period in order to accept a new offer. | |
| Reference in the law Securities and Exchange Act, Article 23-2, 24-2 | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any The price must be equal for all. | |
| Reference in the law Securities and Exchange Act, Article 25-2 | |

Is there a minimum price?

| | |
|--|--|
| No | |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? No price restrictions | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|-----|--|
| Yes | |
|-----|--|

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the takeover differ from the price offered in the takeover process*)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---|
| Takeovers by funds (sole beneficiary) Acting in concert Takeovers by foreigners |
|---|

Do you think a seminar on takeovers should be organized?

| | |
|---|--|
| Yes | |
| If yes, what kind of issues should be presented? Case studies and enforcement issues | |

Lithuania

| Jurisdiction | Name of authority |
|--------------|--------------------------------------|
| Lithuania | The Lithuanian Securities Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Lithuanian Securities Commission is responsible for takeovers in Lithuania.

What regulations address the problem of takeovers?

laws issued by ~~President~~/Parliament
implementing regulations issued by ~~Government~~/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any A person who, acting independently or in concert with other persons, acquires 1/10, 1/5, 1/4, 1/3, 1/2, 2/3 or 3/4 of votes at the general meeting of shareholders of an accountable issuer registered in the Republic of Lithuania, must, not later than within 7 days, inform the Securities Commission and the issuer about the total amount of votes and furnish data on securities entitling him to vote or hold securities of the issuer in the future. This obligation shall also be binding where the specified limits are exceeded in the diminishing direction. | |
| Reference in the law The Law on securities Market – article 15 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| votes |
| Reference in the law The Law on securities Market – article 15 |

What are disclosure thresholds?
(e.g. 5%, 10%)

Disclosure thresholds are : 1/10, 1/5, 1/4, 1/3, 1/2, 2/3 or 3/4 of votes at the general meeting. If the amount of votes is acquired or disposed of by acquiring or transferring depositary receipts in respect of shares, the disclosure obligation shall be binding to the owners of the receipts.

Reference in the law
The Law on securities Market – article 15

Whom the investor is obliged to inform and when?

| | |
|---|------------------------------------|
| <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> a company | Deadline 7 days Deadline 7 days |
| Comments, if any Investor is obliged to inform the Lithuanian Securities Commission and the issuer within 7 days. The Securities Commission shall inform the public of receipt of notification on the acquisition or disposal block of shares the within 9 days. | |
| Reference in the law The Law on securities Market – article 15 | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Reference in the law The Law on securities Market – article 15 |

What is the sanction in case of failure to disclose shareholding in listed companies?

A person who fails to fulfil the obligation within a set term, for two years from the moment of submission of correct data, shall lose the right to hold at general meetings of the issuer's shareholders more votes than the last threshold about which he has duly informed. Moreover, all decisions adopted during the period between the acquisition of the share holding and the moment of correct information disclosure may be annulled following judicial procedure if the issuer's managers have been changed or property or non-property rights of shareholders have been violated by these decisions

Reference in the law
The Law on securities Market – article 15

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|----|--|
| No | |
|----|--|

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Reference in the law
The Law on securities Market – article 16.

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|--|
| Yes | |
| Reference in the law The Law on securities Market – article 15. | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Investor is obliged to inform the company.

Reference in the law
The Law on securities Market – article 15.

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| Yes | |
| Comments, if any (is there any special procedure for providing such information) | |
| Usually there is no such an obligation. However if that would be treated as a material event, the company is obliged to inform about immediately the LSC, the stock exchange and the market. | |
| The public company should also disclose the shareholders holding at least 5 % of the total number of votes at the general meeting of shareholders in the annual report and the prospectus. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

Please see point 3. above

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Please see point 3. above

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? (<i>Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i>)</p> <p>If a person, acting independently or in concert with other persons, acquires more than 40 percent of votes at the general meeting of shareholders of an accountable issuer, he must, within 30 days, either:</p> <p>transfer securities exceeding this threshold or</p> <p>announce a tender offer to buy up the remaining voting securities of the issuer and the securities confirming the right to acquire voting securities.</p> | |
| <p>Reference in the law</p> <p>The Law on securities Market – article 19.</p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The Securities Commission shall have the right to establish general cases of exceptions when announcement of a mandatory tender offer is not compulsory if the requirement to announce a tender offer would be unfair, inexpedient or contradictory to the market interests. (see references)

Reference in the law

The Law on securities Market – article 19(4)

RESOLUTION No 14 on the Amendment of Resolution No. 7, of February 20, 1998 of the Lithuanian Securities Commission “Concerning the Rules on Submission, Registration and Execution of a Tender Offer”, annex 5.

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

An investor is allowed to announce a tender offer to subscribe for the sale of a part of remaining shares in the case of **voluntary tender offer**, which means the procedure of announcing a person’s intention to acquire a part of or all the securities of an issuer.

In the case of the **mandatory tender offer** investor is obliged to buy up the remaining voting securities of the issuer and the securities confirming the right to acquire voting securities

Reference in the law

The Law on securities Market – articles 17; 19

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| Yes, for voluntary tender offer. | No, for mandatory tender offer |
|---|--------------------------------|
| <p>Comments, if any</p> <p>In case of a voluntary tender offer:</p> <p>upon the registration of the tender offer with the Securities Commission until the commencement of the execution thereof the Bidder shall transfer into the account specified in the rules of the National Stock Exchange of Lithuania the amount not less than 10 per cent of the funds necessary for the settlement for the securities that are intended to be purchased, and produce to the Securities Commission a copy of a document certifying thereto.</p> | |
| <p>Reference in the law</p> <p>RESOLUTION No 14 on the Amendment of Resolution No. 7, of February 20, 1998 of the Lithuanian Securities Commission “Concerning the Rules on Submission, Registration and Execution of a Tender Offer, paragraph 22.</p> | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| Yes, for voluntary tender offer. | No, for mandatory tender offer |
|--|--------------------------------|
| <p>Comments, if any</p> <p>Upon registration with the Securities Commission, a voluntary tender offer may be withdrawn only in exceptional cases, when the Securities Commission, having considered the reasons presented in the Bidder’s application, passes a decision to issue a permission to withdraw the tender offer.</p> <p>Sanction: legal persons who have registered a tender offer with the Securities Commission but who have failed to execute it, - up to LTL 500 000.</p> | |
| <p>Reference in the law</p> <p>The Law on securities Market – article 61; RESOLUTION No 14 on the Amendment of Resolution No. 7, of February 20, 1998 of the Lithuanian Securities Commission “Concerning the Rules on Submission, Registration and Execution of a Tender Offer, paragraph 35.</p> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Upon the registration of the tender offer with the Securities Commission the conditions thereof may be amended at any time by registering the relevant amendments in the circular with the Securities Commission.

The Commission may refuse to register the changes in the circular where:

- conditions are changed to the detriment of the Target's investors;
- amendments materially change conditions of the tender offer;
- less than 10 days remain from the registration of the amendments until the expiration of the tender offer;
- the amendments contradict the provisions of these Rules and other legal acts regulating the securities market of the Republic of Lithuania.

Reference in the law

RESOLUTION No 14 on the Amendment of Resolution No. 7, of February 20, 1998 of the Lithuanian Securities Commission "Concerning the Rules on Submission, Registration and Execution of a Tender Offer, part VII.

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|-----|--|
| Yes | |
|-----|--|

Reference in the law

The Law on securities Market – article 17(2)

Is there a minimum price?

| | |
|---------------------------------|--|
| Yes, for mandatory tender offer | |
|---------------------------------|--|

If yes, how it is defined *(e.g. an average market price for a given period before the announcement)*?

The price of a mandatory tender offer may not be lower than the highest price of the securities which the offeror acquired over 12 month before exceeding the threshold. Each shareholder of the issuer shall have the right to appeal to court with a request to oblige the person who has submitted the mandatory tender offer to increase the price of that offer so that it complies with the fairness requirements.

Reference in the law

The Law on securities Market – article 19.

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| No, for mandatory tender offer | |
| Reference in the law The Law on securities Market – article 19. | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|---|--|
| Yes | |
| Comments, if any If a person who has submitted a tender offer during 12 month after the execution of the offer acquires the securities for which he submitted the tender offer at a price higher than the offer price, he must pay the difference of the price to persons who replied to the offer | |
| Reference in the law The Law on securities Market – article 17. | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---------------------------------|
| Exemptions Acting in concert |
|---------------------------------|

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| If yes, what kind of issues should be presented? Exemptions Acting in concert issues Rules of determination of the price in case when threshold was reached without the transactions (present, reorganization, starting acting in concert and so on). | |

Former Yugoslav Republic of Macedonia

| Jurisdiction | Name of authority |
|---------------------------------------|---|
| Former Yugoslav Republic of Macedonia | Securities and Exchange Commission (MSEC) |

Which authority is responsible for takeovers in your jurisdiction?

The MSEC is responsible for takeovers in Macedonia.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by MSEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any | |
| When an individual directly or indirectly acquires 5% of all issuer's voting securities and every consecutive 5% of securities (hereinafter: qualified shareholding), he shall immediately notify the issuer of such securities and the MSEC about it. The issuer receiving this notification shall immediately publish such notification. | |
| Reference in the law Law on takeovers-article 64 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| votes |
| Reference in the law Law on takeovers-article 64 |

What are disclosure thresholds?
(e.g. 5%, 10%)

When an individual directly or indirectly acquires 5% of all issuer's voting securities and every consecutive 5% of securities (hereinafter: qualified shareholding), he shall immediately notify the issuer of such securities and the MSEC about it. Also, persons or entities which on the date of the publication of the takeover bid, hold more than 10% of voting securities or securities that give the right of conversion or acquisition of securities that ensure the voting right to the issuer of securities which are subject of the takeover bid, which later acquire such share of securities, shall notify thereof the MSEC within three days after the publication, i.e. after the acquisition of such securities and shall regularly notify the MSEC of any subsequent acquisition of such securities and the price at which such securities have been acquired.

Reference in the law
Law on takeovers-articles 59 and 64

Whom the investor is obliged to inform and when?

| | |
|-----------------------|-----------------------|
| supervisory authority | Deadline: immediately |
| a company | Deadline: immediately |
| other (public) | Deadline: immediately |

Comments, if any
Investors are obliged to notify the MSEC, the company and the public immediately after the shares are acquired.

Reference in the law
Law on takeovers-article 64

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition |
| Comments, if any Acquisition is already mentioned in part I/1. |
| Reference in the law Law on takeovers-article 64 |

What is the sanction in case of failure to disclose shareholding in listed companies?

A fine of 250.000 up to 300.000 denars. (1 Euro=approximately 62 denars)

If the person having in its possession a qualified shareholding fails to notify the issuer and the MSEC in compliance with article 64 of the Law, it shall not be entitled to vote, i.e. to participate in the management of the company-issuer of such shares on the basis of the ownership of shares in excess of the qualified shareholding.

Reference in the law

Law on takeovers-article 65

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

Yes

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

If several persons or entities act jointly in the exercise of their voting rights derived from the ownership of shares of a particular joint stock company-issuer on the basis of a shareholders' agreement or otherwise and if any one of them acquires the joint stock company's securities granting it the right to vote so that, together with other securities already in the possession of such persons or entities, these securities grant them 25% of the voting rights, a takeover bid shall be submitted by each person or entity, unless they agree that the takeover bid shall be made by one of them only (hereinafter: joint proxy).

The exercise of voting right on the basis of gathered proxies, if such proof the Law on takeovers hereof and the contents of such proxies complies with the provisions set out in Article 62 of the same Law, shall not be construed as the joint action as stipulated above.

Reference in the law

Law on takeovers-article 60

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Reference in the law

Law on takeovers-article 64

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

As mentioned above, investors are obliged to inform the company-issuer.

Reference in the law

Law on takeovers-article 64

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|-----------------------------|
| Yes supervisory authority market other (public) | No <input type="checkbox"/> |
| <p>Comments, if any (is there any special procedure for providing such information)</p> <p>I. When an individual directly or indirectly acquires 5% of all issuer's voting securities and every consecutive 5% of securities (hereinafter: qualified shareholding), he shall immediately notify the issuer of such securities and the MSEC about it.</p> <p>II. Issuers of shares and the Central Depository of Securities shall notify the MSEC of any transfer of voting shares by which the buyer, immediately or cumulatively over a period no longer than 12 months, has acquired at least 10 % of the basic principle of the joint stock company.</p> <p>III. A listed company must without delay notify the following information relating to its capital: any increase or decrease of its shareholding capital; any proposed change in its capital structure, including the structure of its listed securities; where a company has listed debt securities, any new borrowing, and in particular any guarantee; any change in the rights attaching to any class of listed securities (including any change in the terms of credit or the rate of interest carried by a debt security); any redemption offer.</p> | |
| <p>Reference in the law</p> <p>I-Law on securities-article 21, II-Law on takeovers-article 64 and III- Macedonian Stock Exchange's Listing Rules</p> | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

As mentioned in II/3 above.

Reference in the law

Law on securities-article 21 and Law on takeovers-article 64

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

An issuer shall be fined for business crime by a money fine of 100,000 to 300,000 denars if it fails to notify the MSEC.

Reference in the law
Law on securities-article 166

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?
The person or entity which has acquired securities issued by certain joint stock company, whereby these securities, together with other existing securities in its portfolio, ensures it a voting right of not less than 25%, shall submit a public takeover bid to acquire these securities under the terms and conditions and in the manner laid down in the Law on takeovers.
If several persons or entities act jointly in the exercise of their voting rights derived from the ownership of shares of a particular joint stock company-issuer on the basis of a shareholders' agreement or otherwise and if any one of them acquires the joint stock company's securities granting it the right to vote so that, together with other securities already in the possession of such persons or entities, these securities grant them 25% of the voting rights, a takeover bid shall be submitted by each person or entity, unless they agree that the takeover bid shall be made by one of them only (hereinafter: joint proxy).

Reference in the law
Law on takeovers-articles 4 and 60

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Takeover bid is not necessary if:

the person or entity concerned has acquired the securities by virtue of merger or partition of the joint stock company in exchange for securities of the legal entity that has ceased to exist due to such merger or partition;
on the basis of the takeover bid or bids under the law, the person or entity concerned has already acquired at least 45% of the securities;
the person has acquired the securities by virtue of enlarging the basic capital, issuing securities for a known buyer, once the shareholders' assembly has given an approval that the person concerned may acquire securities in the amount surpassing the condition stipulated in this Law for issuing a takeover bid; and
the securities have been acquired as a gift among natural persons or by virtue of inheritance.

Reference in the law

Law on takeovers-article 13

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

A public takeover bid is a written proposal by the bidder for concluding an agreement for sale of securities of a particular company – issuer, which is addressed to all holders of such securities.

But, the takeover bid may lay down the minimum number of securities subject to the takeover bid, which the holders must accept in order to consider the takeover bid successful.

Reference in the law

Law on takeovers-articles 7(1) and 12 (1)

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|---|--|
| Yes | |
| Comments, if any | |
| <p>Prior to the publication of the takeover bid, the bidder shall deposit a sum of money necessary for the payment of all securities which are subject of the takeover bid to a separate account of the Central Securities Depository or a guarantee issued by a bank. In the event of a combined bid, the bidder shall, prior to the publication of the takeover bid, deposit with the Central Securities Depository a sum of money necessary for the payment of the part of the price to be paid out in cash. In the event of an alternative bid, the bidder shall, prior to the publication of the takeover bid, deposit with the Central Securities Depository a sum of money necessary for the payment of all securities which are subject of the takeover bid if all holders of securities opted for the payment of the purchase price in cash. If the takeover bid includes substitutional securities, the bidder shall give an order to the Central Securities Depository for reserving those securities prior to the publication of the takeover bid, so that the bidder one may no longer freely dispose of such securities until the fulfilment of obligations towards the holders of securities which have accepted the takeover bid.</p> | |
| Reference in the law | |
| Law on takeovers-articles 29 and 30 | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes | |
| <p>Comments, if any</p> <p>If the bidder, after issuing the notification, gives up the intention to make a takeover bid, he shall not make a new takeover bid one year following the day of giving up of his intention. The new takeover bid may be given in a shorter term if the giving up of the intended takeover bid has been approved by the MSEC.</p> <p>From the publication of the takeover prospectus until the expiration of the deadline for acceptance of the takeover bid, the bidder may withdraw his bid, i.e. withdraw from the existing agreement which was made on the acceptance of such bid, if the possibility of withdrawal has been provided for by the takeover prospectus, when another person or entity submits a competitive bid in accordance with the Law or if circumstances arise thereafter that make the bidder's fulfilment of his obligations difficult to such an extent that the purchase of securities no longer meets the bidder's expectations and that in the general opinion it would be unfair to maintain the agreement effective.</p> <p>For a period of 12 months after the decision of the MSEC, the bidder shall not make another takeover bid nor shall he buy securities which were subject of the takeover bid, if these securities, together with other securities which are already in his possession, provide him with more than 25% voting right in several cases, and one of them is if the takeover bid was withdrawn.</p> | |
| <p>Reference in the law</p> <p>Law on takeovers-articles 18, 37 and 49</p> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

If the bidder modifies his bid by offering a higher price or a more favourable conversion ratio, such modification shall be published not later than seven business days prior to the expiration of the term for accepting the bid and shall, prior to publishing the modification of the takeover bid, notify the MSEC and the Central Securities Depository about it.

The bidder who has modified his takeover bid, shall place an additional deposit in the amount of the difference between the new and the old price within the time limit stipulated above.

If the bidder modifies his takeover bid, the persons or entities that have already accepted his previous bid shall be entitled to withdraw from the agreement and accept the new, modified takeover bid. With the exception of these modifications, the bidder shall not make any changes in his takeover bid or in the conditions thereof.

The time limit for acceptance of the takeover bid shall not be less than 30 days and not more than 60 days from the date of the first publication of the prospectus extract and the takeover bid, but if during the takeover bid the bidder modifies the bid as mentioned above, the time limit for acceptance of the bid shall be extended by seven days.

If the bidder himself or a third party for his account has acquired securities which are subject of this takeover bid from the date of the notification to the expiration of the time limit for acceptance of the bid under conditions which are more favourable to the holders of securities than those quoted in the takeover bid and the takeover prospectus, the holders of securities which are subject of the takeover bid shall be entitled to accept the bid under such more favourable conditions.

In this event, the takeover bid shall be deemed to have been modified, and the time limit for accepting the modified takeover bid shall be extended by seven days, and also the MSEC shall enact a decision establishing that the takeover bid has been modified and shall order the bidder to publish the modified takeover bid as well as the time limit for the acceptance of the modified takeover bid; the bidder shall also be ordered to place an additional deposit equalling the difference between the new and the old price within the same time limit and in the manner according to the article 29 from the law.

From the date of receiving this decision to the date of publication of the modified takeover bid and placing of the additional deposit, the acceptance or cancellation of the acceptance of the takeover bid by the holders of securities which are subject of the takeover bid shall be void. During this time, the expiration of the time limit for acceptance of the takeover bid shall be suspended. If the bidder fails to comply with the MSEC's decision, the takeover bid procedure shall be invalidated by the MSEC.

In the event of a competitive takeover bid, the persons that have already accepted the initial takeover bid shall be entitled to withdraw from the written statement and accept the competitive takeover bid.

If the initial takeover bid specifies the minimum number, i.e. percentage of holders of securities which are subject of the takeover bid that have to accept the bid in order to make it successful, the competitive takeover bid shall not specify a number or percentage which is lower than that of the initial takeover bid.

If the competitive takeover bid is made when the number or percentage of the initial bid mentioned above has already been exceeded, such competitive takeover bid shall not include the condition set out in the previous paragraph.

| |
|--|
| Reference in the law Law on takeovers-articles 22,27, 31, 32 and 52 (3,4,5) |
|--|

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|--|
| Yes | |
| Comments, if any The price, i.e. the conversion rate for substitutional securities which is determined by the bidder in his takeover bid shall be equal for all securities of individual classes or types of securities which are subject to the takeover bid. | |
| Reference in the law Law on takeovers-article 7(3) | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? Generally no, but if the bidder acquires more than 10% of the securities which are subject to the takeover bid in the last six months prior to the announcement thereof, his takeover bid shall provide at least the same price of the highest price that has been offered by him for the purpose of acquisition of securities during the last six months prior to the announcement of the takeover bid. If, in opposition to this Law, the bidder acquires more than 25% of the securities which are subject to the takeover bid prior to the announcement thereof, his takeover bid shall offer the highest price paid by him for any securities acquired after the acquisition of 25% of securities subject to the takeover bid. | |
| Reference in the law Law on takeovers-article 7(4) (5) | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes | |
| Comments, if any As mentioned in 7.2, generally yes, but if the circumstances from 7.2 occurs, that the offered price can not be lower than the maximum price paid by an offeror in a preceding period. | |
| Reference in the law Law on takeovers-article 7(4) | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

Insufficient appliance of the Law on takeovers, since the capital market's industry is not familiar with its content and the procedures defined in it, as well as appropriate appliance of the regulation regarding the determination of criteria for affiliated persons during the takeover process.

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| <p>If yes, what kind of issues should be presented?</p> <p>Education of the MSECs staff that after that will be passed as experience to the capital market's industry for appropriate appliance of the law, since they are not familiar enough with the obligations that arise from it, as well as its benefits.</p> | |

Malaysia

| Jurisdiction | Name of authority |
|--------------|----------------------------|
| Malaysia | Securities Commission (SC) |

Which authority is responsible for takeovers in your jurisdiction?

SC. In addition, for companies involved in specific industries, they would also be regulated by the relevant authorities, eg. banks are regulated by Bank Negara Malaysia, manufacturing companies are regulated by Ministry of International Trade and Industry. Parties involved in take-overs are also required to comply with the national equity policy, which is regulated by the Foreign Investment Committee (FIC) through the FIC Guidelines.

What regulations address the problem of takeovers?

laws issued by Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| The Companies Act defines a holding of at least 5% as ‘substantial’ holding. As such, any one who acquires such percentage or more is required to disclose. | |
| S. 69E, F & G of the Companies Act 1967 (CA). | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--------------|
| votes |
| S.69D of CA. |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|--------------|
| 5% |
| S.69D of CA. |

Whom the investor is obliged to inform and when?

| | |
|--|--|
| supervisory authority exchange a company | Deadline 7days Deadline 7 days Deadline 7 days |
| S. 69E, F, I of CA | |

Are the requirements related to acquisition or to disposal of shares?

| |
|-------------------------|
| acquisition disposal |
| S. 69E, F & G of CA |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| A person who fails to comply with the above disclosure sections (s.69 E, F, G, J) shall be guilty of an offence, with a penalty of RM1 million or RM50,000 (default penalty); or any administrative sanction. |
| S.69 M & N of CA. |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| |
|--|
| Although there are no specific provisions to require the supervisory authority to verify, there are also no specific provisions to prohibit authorities if any verification is needed. |
|--|

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

The definition of persons acting in concert is provided in sections 33(2) and 33(3) of the SCA. Please refer.

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes | |
| Required of shareholders and directors of the given company. | |
| S. 69 E, F, G of CA. & S. 99A,B of the Securities Industries Act (SIA). | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Shareholders & directors of the given company |
| S. 69 E, F, G of CA. & S. 99A,B of SIA |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| Yes supervisory authority market | |
| S. 69 E, F, G of CA ; S. 99A,B of SIA ; Listing Requirements of the Malaysian Securities Exchange Berhad (LR MSEB) | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(*e.g. what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|---|
| A public company is required to make an immediate announcement to the Bourse in relation to acquisitions of substantial blocks. |
| LR MSEB |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

This would be a breach of the LR of the exchange, and the exchange may impose sanctions ranging from the issuance of a caution, public reprimand or a fine.

Chapter 16 of Listing requirements

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes

When an acquirer obtains more than **33%** control in a company, he is obliged to undertake a mandatory offer for the remaining voting shares in that company.

In a situation where the acquirer already holds **more than 33% and less than 50%** of the company's shares, he would be obliged to undertake a mandatory offer for the remaining shares if he acquires more than **2%** of the company's issued and paid-up capital in any 6-month period.

S.6 of the Code

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Exemptions are provided under Practice Notes 2.9.1 until Practice Note 2.9.10 of the Code, as follows:

PN2.9.1 – Exemption if transactions involve new issue of securities

PN2.9.2 – Exemption if convertible securities are exercised

PN2.9.3 – Exemption in rescue operations

PN2.9.4 – Exemption arising from foreclosure of voting shares

PN2.9.5 – Exemption involving placement of securities

PN2.9.6 – Exemption if the remaining voting shares of a company have given written undertaking not to accept an offer

PN2.9.7 – Exemption involving acquisitions of additional voting shares by members of a group acting in concert

PN2.9.8 – Exemption in compulsory acquisition situations

PN2.9.9 – Exemption based on national policy

PN2.9.210 – Exemption in share buy back situation

Commission has powers to grant exemption in any particular takeover situation from the provisions of the SCA, Code and rulings made by the SC pursuant to Section 33C of the SCA.

Reference in the law

SCA and the Code

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

A partial offer, which is an offer for a specific % of shares in the company, can only be undertaken with the prior approval of the SC. As such, the investor would accept from all accepting shareholders up to the percentage of the voting shares to be acquired.

S.11 & Practice Note 3.1 of the Code

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

No

Comments, if any
The Code only requires a confirmation from the Offeror and the Adviser on the Offeror's financial capabilities to complete the offer.

S.27 of the Code.

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Yes

Comments, if any
The prior written approval of the SC is required before an offer can be withdrawn. Failure to comply with this provision would result in a breach of the Code's provisions and would attract administrative sanctions under the SCA (such as fines, public or private reprimands, etc).

S.33(1) of the Code & s.33D of SCA.

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

The offeror is not allowed to revise the offer price to a level lower than the first offer and the revised price should be made available to all shareholders including those who have already accepted the offer prior to the revision.

However, an offeror is not allowed to revise the terms of the offer after the 46th day from the date the offer document was posted to the shareholders.

Where offeror revises or is required to revise the offer, he shall:
 post written notification of the revised take-over offer to all offeree shareholders including those who have accepted the original offer;
 keep the offer open for acceptances for at least another 14 days from the date of posting of the written notification of the revised offer.

Section 23 of the Code.

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|--|
| Yes | |
| An offer price must be equal for all shareholders in the same class. | |
| S. 20 of the Code | |

Is there a minimum price?

| | |
|--|--|
| Yes | |
| <p>In the case of a mandatory offer, the offer price should not be less than the highest price paid or agreed to be paid for the voting shares (to which the offer relates) within a period of 6 months prior to the beginning of the offer period.</p> <p>Where the offeror or any person acting in concert with the offeror has purchased or agreed to purchase any voting shares to which the take-over offer relates during the offer period at a consideration that is higher than the consideration stated in the offer document to be paid or provided for the acceptances of the take-over offer, the offeror shall increase the consideration that is to be paid or provided for the acceptances of the take-over offer to not less than the highest price (excluding stamp duty and commission) paid or agreed to be paid by the offeror or any persons acting in concert with the offeror for any voting shares to which the take-over offer relates during the offer period.</p> | |

| |
|--|
| S.20(1) of the Code S.20(2) of the Code |
|--|

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|----|--|
| No | |
|----|--|

See 7.2 above.

The offer price should not be less than the highest price paid or agreed to be paid for the voting shares (to which the offer relates) within a period of **6 months** prior to the beginning of the offer period.

| |
|---------------------|
| S.20(1) of the Code |
|---------------------|

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|----|--|
| No | |
|----|--|

The SC does not regulate the pricing of any acquisition made after an offer is withdrawn or lapses. However, an offeror is not allowed to launch another offer or acquire such that they would trigger a mandatory offer within 12 months from the date the original offer was withdrawn or lapsed.

| |
|---------------------|
| S.33(2) of the Code |
|---------------------|

What kind of problems do you face in enforcement of takeovers regulations?

Acting in concert

Surveillance of take-over activities

Pricing of potential offer of downstream companies

- Definition of control: equity holding as defined under the Securities Commission Act 1993 versus control of management/board of directors

Do you think a seminar on takeovers should be organized?

| | |
|-----|--|
| Yes | |
|-----|--|

If yes, what kind of issues should be presented?
As above.

Malta

| Jurisdiction | Name of authority |
|--------------|---|
| Malta | Malta Financial Services Authority (MFSA) |

Which authority is responsible for takeovers in your jurisdiction?

Malta Financial Services Authority

The Director of the Office of Fair Trading

What regulations address the problem of takeovers?

☒ laws issued by Parliament
☒ implementing regulations issued by MFSA
 self-regulation issued by the market
☒ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Listing Rules and Regulations on Control of Concentrations 2002 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| <input checked="" type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any |
| Reference in the law: Listing Rules |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| 5% : via a Company Announcement |
| 35%: Co Annt plus Circular to shareholders |
| 100% (reverse takeover): advance consultation with the Listing Authority plus the publication Of Listing Particulars. |
| Reference in the law: Listing Rules |

Whom the investor is obliged to inform and when?

| | |
|---|---|
| <input checked="" type="checkbox"/> supervisory authority exchange news agency a company <input checked="" type="checkbox"/> other - the market | Deadline: Without delay Deadline _____ Deadline _____ Deadline _____ Deadline _____ |
| Comments, if any | |
| Reference in the law: Listing Rules | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal <input checked="" type="checkbox"/> both |
| Comments, if any |
| Reference in the law: Control of Concentration 2002 – Competition Act |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| Various: from reprimands to fines as contemplated in the Financial Markets Act with regards to failing to comply with Listing Rules and as contemplated in the Competition Act for failing to notify the Director of the Office of Fair Competition. |
| Reference in the law: Financial Markets Act – Listing Rules Competition Act – Regulations on Control of Concentration. |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any: The Malta Stock Exchange, through the Central Securities Depository, can have access to Company Register but it reports to Company Secretaries. | |
| Reference in the law | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|----------------------|
| None |
| Reference in the law |

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law: Listing Rules | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Either (i) Company Announcement; or (ii) Circular to Shareholders; or (iii) Listing Particulars |
| Reference in the law: Listing Rules |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|-----------------------------|
| Yes supervisory authority market investors X other – the market | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) | |
| Reference in the law | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|----------------------|
| No answer |
| Reference in the law |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|----------------------|
| No answer |
| Reference in the law |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investors or to the fact that the investor holds specified number of shares/votes).</i></p> | |
| Reference in the law | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|----------------------|
| No answer |
| Reference in the law |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|----------------------|
| No answer |
| Reference in the law |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|----------------------|
| |
| Reference in the law |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? | |
| Reference in the law | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|--|
| |
|--|

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? | |

Mauritius

| Jurisdiction | Name of authority |
|--------------|-------------------------------|
| MAURITIUS | FINANCIAL SERVICES COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

Financial Services Commission of Mauritius and the Stock Exchange of Mauritius

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any . Anyone who becomes a substantial shareholder is required to notify the Registrar of Companies at the earliest and also inform the market accordingly. | |
| Reference in the law Companies Act 2001 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| votes |
| Reference in the law: Companies Act 2001 |

What are disclosure thresholds?

(e.g. 5%, 10%)

Any investor who has 5% of the aggregate voting power in a company is required to inform the Registrar and the market. The Central Depository informs the FSC of the name of investors who become substantial shareholders.

Reference in the law Companies Act 2001

Whom the investor is obliged to inform and when?

supervisory authority
exchange

Deadline
Deadline Forthwith
Forthwith

Reference in the law Financial Services Development Act 2001, Stock Exchange Act 1988 and Central Depository System Regulations

Are the requirements related to acquisition or to disposal of shares?

acquisition

Reference in the law Companies Act 2001

What is the sanction in case of failure to disclose shareholding in listed companies?

May lead to a fine

Reference in the law Companies Act 2001

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

This should be disclosed

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes | |
| Reference in the law Companies Act 2001 | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Communique in the press by the companies concerned

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|--|
| Yes supervisory authority market investors | |
| Reference in the law Companies Act 2001 | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

The public company should inform the Registrar of Companies at the earliest.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

No specific sanction

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|-----------|--|
| No answer | |
|-----------|--|

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

No answer

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

No answer

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

No answer

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

No answer

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

No answer

How is the price in a tender offer established?

Does it have to be equal for all investors?

No answer

Is there a minimum price?

No answer

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

No answer

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

No answer

What kind of problems do you face in enforcement of takeovers regulations?

- Modern & effective regulations on takeovers
- Threshold limits to be determined
- A comprehensive Code on Takeovers

Do you think a seminar on takeovers should be organized?

Yes

- If yes, what kind of issues should be presented?
- Regulations on takeovers
 - Threshold limits and how to deal with them
 - Reverse takeovers
 - International takeovers
 - Accounting & Finance implications concerning takeovers
 - Sanctions

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| NIGERIA | SECURITIES AND EXCHANGE COMMISSION |

Which Authority is responsible for takeovers in your jurisdictions?

Securities and Exchange Commission

What regulations address the problem of takeovers?

- ☒ Laws issued by President/Parliament
 Implementing regulations issued by government/SEC
 Self-regulation issued by the market
 Articles of the given company approved by shareholders

Investor disclosure obligations
 (obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
 (e.g. to inform market about changes of the structure of share ownership)

| | |
|--|----|
| <input checked="" type="checkbox"/> Yes | No |
| Comments, if any: | |
| To enable us monitor changes in ownership structure that could result in acquisition | |
| Reference in the law: Rule 110 of the Rules and Regulations made pursuant to the Investments and Securities Act (ISA) No 45 of 1999 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
 (e.g. in case of preferred shares the number of shares differs from number of votes)

| | |
|--|-----------------|
| <input checked="" type="checkbox"/> | Shares Votes |
| Comments, if any: By Both | |
| Reference in the law: Section 99 (3) of Investments and Securities Act (ISA) 1999 | |

What are disclosure thresholds?
 (e.g. 5%, 10%)

| |
|---------------------------------------|
| 5% |
| Reference in the law: Rule 109 (A) |

Whom the investor is obliged to inform and when?

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> | Supervisory authority _____ Exchange News agency A company Other | <i>Deadline</i> ____ Monthly ____ Deadline _____ Deadline _____ Deadline _____ Deadline _____ |
| Comments, if any: The Supervisory Authority has the Statutory Powers to Supervise a capital market | | |
| Reference in the law: Section 8 (R) of Investments and Securities Act (ISA)\Pursuant to ISA Rule 120 of the Rules and Regulations | | |

Are the requirements related to acquisition or to disposal of shares?

| | |
|---|---------------------------------|
| <input checked="" type="checkbox"/> | Acquisition Disposal Both |
| Comments, if any: The Requirement is related to acquisition of shares | |
| Reference in the law: Section 99 (2) of the Investments and Securities Act | |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| Payment of Penalty of ₦100.00 per day for the period of default |
| Reference in the law: Schedule II (Penalties\ fines) Rules and Regulations Pursuant to the ISA. |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | | |
|---|-----|----|
| <input checked="" type="checkbox"/> | Yes | No |
| Comments, if any (what would be the procedure for verification of such shareholding): Call for information from Registrar and carry out Onsite and offsite inspection of records of registrars | | |
| Reference in the law: Section 8 (r) of ISA and Rule | | |

What are your regulations concerning capital groups and market participants acting in concert (acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company)?

Shareholders Associations?

| |
|----------------------|
| Not Applicable |
| Reference in the law |

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Comments, if any: Trading on the floor of the exchange determines disposal of shares in Public companies. | |
| Reference in the law | |

Annual Reports etc

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| The daily trading publication of the Nigeria Stock Exchange. Quarterly and half yearly report. |
| Reference in the law |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Supervisory authority Market Investors Other | |
| Comments, if any (is there any special procedure for providing information): <i>Through the records maintained by the Registrar</i> | |
| Reference in the law: Rule 200 of the Rules and Regulation made pursuant to the ISA. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

| |
|--|
| Once the shares of the shareholder is 33 ¹ / ₃ % |
| Reference in the law: Section 104(1)c of the ISA |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|--|
| Fines for late filling and non compliance with the rules and regulations of the Commission |
| Reference in the law: Schedule VII Rule II (iv) |

Tender offers

Is the investors obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|----|
| <input checked="" type="checkbox"/> | No |
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? Exceeding certain threshold can be a result of other factors than acquiring shares; it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor or to the fact that the investor holds specified number of shares/votes).</p> <p>33¹/₃% of the total shareholding of the company.</p> | |
| <p>Reference in the law: Section 104 (1) (a and c) of the ISA</p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold or votes/shares? What are the exemptions?

| |
|--|
| No fewer than 20 shareholders or such other number as may be prescribed by regulations in order to purchase shares by way of agreement. <i>In case where the shares to be acquired under a bid are shares in a private company.</i> |
| Reference in the law: Section 104 (3 and 4) of the ISA |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when moiré investors subscribe)

| |
|---|
| Yes, the investor is to give notice to the holders of the remaining shares, informing the dissenting shareholders to elect an option with respect to the shares |
| Reference in the law: <i>Section 117(2) of the ISA</i> |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money – or other assets – necessary to acquire shares in the offer).

| | |
|---|----|
| <input checked="" type="checkbox"/> Yes | No |
| Comments, if any | |
| Reference in the law: None | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal).

| | |
|---|----|
| <input type="checkbox"/> Yes | No |
| Comments, if any Not provided in the law | |
| Reference in the law | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|-------------------------|
| Not provided in the law |
| Reference in the law |

How is the price in a tender offer established?

| |
|---|
| Market Price depending on the state of the company. It could be at premium or discount. |
| Reference in the law |

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Comments, if any Depend on the strength of negotiation with the shareholders by the acquirer/s. | |
| Reference in the law: Section 112 of the ISA | |

Is there a minimum price?

| | |
|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If yes, how is it defined (e.g. an average market price for a given period before the announcement?) | |
| Reference in the law: Not provided in the law | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (e.g. over the last 12 months)?

| | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Comments, if any | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the takeover? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|--|----|
| <input checked="" type="checkbox"/> Yes | No |
| Comments, if any: Not provided in the law | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|--|
| Cross border problems where the acquiring company is resident abroad – problems of legislation and procedures. |
|--|

Do you think a seminar on takeovers should be organized?

| | |
|---|----|
| <input checked="" type="checkbox"/> Yes | No |
| If yes, what kind of issues should be presented? Understanding the issues, procedures and mechanics of Takeover in the country | |

Oman

| Jurisdiction | Name of authority |
|--------------|--------------------------------|
| Oman | Capital Market Authority (CMA) |

Which authority is responsible for takeovers in your jurisdiction?

No answer

What regulations address the problem of takeovers?

No answer

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any As per Article 7 of CMA Law | |
| <p>Reference in the law (a) Any persons who owns individually or together with his minor children shares amounting to 10% or more of the shares of any joint stock company, must promptly notify the Authority of the same in writing and shall inform the Authority of any dealings or transactions carried out which lead to the increase of such percentage.</p> <p>(b) Should a person or a number of related persons owning 15% of the shares of a joint stock company whose shares were offered for public subscription wish to dominate the company by owning 35% or more of the issued shares, then such person or persons should notify the Authority of the same through the Executive President prior to such purchase. Should the Board consider such domination or ownership not to be in the interest of the national economy, then such person and its Brokers shall be advised to refrain from such purchase, failing which the matter shall be referred to the Cabinet of Ministers to take the appropriate decision. The above provision shall also apply in the event that the shares are transferred to one or more related persons by means of grant, inheritance or will.</p> <p>(c) Should the subject matter of domination or ownership be a bank or establishment which exercises banking business, then the prior consent of the Central Bank of Oman must be obtained in accordance with the provisions of the Banking Law.</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

shares

What are disclosure thresholds?
(e.g. 5%, 10%)

10%

Whom the investor is obliged to inform and when?

supervisory authority

No deadline

Are the requirements related to acquisition or to disposal of shares?

acquisition

What is the sanction in case of failure to disclose shareholding in listed companies?

Article 68 and 69 of CMA Law deal with the Penal Provision.

Reference in the law

Article 68: Any infringement of the provisions of this Law or its Regulations or the Guidelines made by the Board of the Authority which may cause a damage to any person shall make the infringing party responsible for such damage.

Article 69: In addition to the penalties specified for the above offences, the infringing party may be banned from practising his business or prohibited from practising the activity, being the subject matter of the offence, for a period not exceeding three years . If the same act is repeated then a judgement resulting in the same penalty is mandatory.

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes

Comments, if any (what would be the procedure for verification of such shareholding)
CMA may inspect the licensed brokers and Muscat Depository and Securities Registration Company (MDSRC) to verify the investors engagement in listed companies.

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

No answer

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|-----|--|
| Yes | |
|-----|--|

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The shareholders register maintained by the Depository (MDSRC), which is provided to the company at periodic intervals.

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|----|--|
| No | |
|----|--|

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

NIL

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

No answer

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|----|--|
| No | |
|----|--|

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

No answer

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

No

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

No answer

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

No answer

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Regulation of take-over is under process.

How is the price in a tender offer established?

No answer

What kind of problems do you face in enforcement of takeovers regulations?

No answer

Do you think a seminar on takeovers should be organized?

No answer

Pakistan

| Jurisdiction | Name of authority |
|--------------|---|
| Pakistan | Securities and Exchange Commission (SECP) |

Which authority is responsible for takeovers in your jurisdiction?

SECP is responsible for takeovers in Pakistan

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| Yes | |
| Comments, if any: The acquirer is required to inform about the acquisition of substantial blocks of shares to the company whose shares have been acquired, to the Stock Exchange where the company is listed and to the SECP and If the acquisition exceeds 25% then also to the public at large through an announcement in a daily newspapers. | |
| Reference in the law: Section 4 & 5 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| shares votes |
| Comments, if any: The requirement is related to the number of voting shares (%) in a listed company. |
| Reference in the law: Section 4(1), 5(1)(a) & 6(1) of the Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. |

What are disclosure thresholds?

(e.g. 5%, 10%)

The disclosure thresholds are:
 (i) more than 10% voting shares
 (ii) more than 25%

Reference in the law: Section 4, 5 and 6 of the Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Whom the investor is obliged to inform and when?

| | |
|---|--------------------------------------|
| supervisory authority exchange a company news agency other (Existing minority shareholders) | Within 2 working days (see comments) |
|---|--------------------------------------|

Comments, if any: In case of a threshold of more than 10 % voting shares, the disclosure should be made within two working days of the receipt of intimation of allotment of voting shares the acquisition of voting shares as the case may be.
 In case of a threshold of more than 25 %, in addition to the aforesaid disclosure the investor is also required to make a public announcement at least in one issue each of a daily newspaper of English and Urdu language not later than two working days before he acquires voting shares on such securities. The public announcement is also required to be submitted to SECP and the stock exchanges simultaneously, at least two working days before its issuance.

Reference in the law: Section 4, 5 & 9(3)&(5) 13(2) of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Are the requirements related to acquisition or to disposal of shares?

acquisition

Reference in the law: Section 4, 5 & 6 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

What is the sanction in case of failure to disclose shareholding in listed companies?

Following sanctions can be imposed in case of failure to disclose share holding in listed companies.
 The acquirer and any person acting in concert shall stand debarred as acquirer for next 3 years
 A penalty/fine up to one million rupees and, in case of continuing default a further sum calculated at the rate of ten thousand rupees per day during the period in which the default continues.

Reference in the law Section 26 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|---|--|
| Yes | |
| <p>Comments, if any (what would be the procedure for verification of such shareholding)</p> <p>From the list of beneficial Owners After completion of the acquisition of more than 25% shares the Offer manager shall send a report to the Commission within 45 days from the closure of the public offer. SEC can undertake an enquiry to investigate into the complaints received from the investors holding not less than 1/10 of the voting shares in a target company, on any matter having a bearing on the allegation of substantial acquisition of voting shares and take over. Moreover SEC can enquire suo moto upon its own knowledge or information in the interest of securities market or the investors for any breach of this ordinance.</p> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| <p>The Listed Companies (Substantial Acquisition of Voting Shares and Take-Overs) Ordinance, 2002 defines “acquirer” as ‘any person who, directly or indirectly, acquires or has proceeded to acquire voting shares in the target company, or acquires or has proceeded to acquire control of the target company, either by himself or through any person acting in concert’. This definition also encompasses capital groups and market participants acting in concert, therefore, provisions of the aforesaid Ordinance will also apply to them.</p> <p>“control is defined to include the right to appoint majority of directors or to control management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether by virtue of his shareholding, management right, shareholders agreement, voting agreement or otherwise;</p> |
| <p>Reference in the law Section 2(a) & 2(j) of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.</p> |

Public company disclosure obligations*(disclosure of shareholders of publicly traded companies)*

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|--|
| Yes | |
| Comments, if any: Investors are required to inform about the acquisition of substantial blocks of shares to the company whose shares have been acquired, to the Stock Exchange where the company is listed and further to the SECP and to the public at large through an announcement in a daily newspapers. | |
| Reference in the law Section 4, 5 & 13(2) 9(3)&(5) of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| <p>The public announcement published in the daily newspaper in English language and a daily newspaper in Urdu language having circulation in the province or provinces in which the stock exchange, on which the target company is listed, is situated.</p> <p>Simultaneous with the submission of the public announcement to the Commission, the public announcement shall also be sent to all the stock exchanges on which the voting shares of the target company are listed for being notified on the notice board and on the automated information system thereof, and to the target company at its registered office for being placed before the board of directors of such company.</p> |
| Reference in the law Section 9 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|--|
| <p>Yes</p> <p>supervisory authority</p> <p>market</p> <p>investors</p> <p>other</p> | |
| <p>Comments, if any (is there any special procedure for providing such information)</p> <p>Please refer to comments given in Question 1 above and Question 1 in Part I.</p> | |
| Reference in the law Section 4,5, 6 & 9 of the Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

As already defined in Question 4 of part I the onus of disclosure is on the acquirer and not the target company.

Reference in the law Section 4 , 5, 6 & 9 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

The sanctions in case of failure to disclose information on acquisition of shares have been prescribed for investors(Refer Question 6 of Part I).

Reference in the law Section 26 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes ☒

No ☐

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

No person can directly or indirectly, acquire voting shares, which (taken together with voting shares, if any, held by such person) would entitle such person to more than twenty five per cent voting shares in a listed company; or control of a listed company, unless such person makes a public announcement of offer to acquire voting shares or control of such company.

Section 5,6 & 9 deals with the threshold at which a public announcement is to be made alongwith the procedure to be followed in case of a public announcement.

Reference in the law:

Section 5, 6 & 9 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The company (acquirer) is not obliged to make a public announcement of offer to acquire voting shares or control of a Company if it is acquiring 25% of voting shares or less. Moreover, any acquirer who already has acquired more than 51% of the voting shares also does not need to make a public announcement for further acquisition of shares.

For exemption please refer to Section 3 of the Listed Companies (Substantial Acquisition of Voting Shares & Take-Over) Ordinance, 2002.

Reference in the law:

Section 3, 4, 5 & 6 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Yes. The investor is allowed to make a public announcement to acquire such percentage as the acquirer may decide.

Reference in the law:

Section 12 of the Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☒

No ☐

Comments, if any. The acquirer shall furnish a security for performance of his obligations on such terms and conditions as may be prescribed

Reference in the law:

Section 19 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002.

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any A tender offer, once made, may be withdrawn under one or a combination of following factors. (a) if the withdrawal is consequent upon any competitive bid; (b) if the sole acquirer, being a natural person, has died; or (c) in such circumstances as may be prescribed. | |
| Reference in the law: Section 18 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|--|
| The acquirer, who has made public announcement may make upward revision in his offer in respect to the price and the number of voting shares to be acquired, at any time up to seven working days prior to the date of the closure of public offer |
| Reference in the law: Section 17 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any: The tender offer needs to contain the number of voting shares to be acquired at the price at which the offer is made is same for all the investors. | |
| Reference in the law: Section 10,11 & 12 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

Is there a minimum price?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? | |
| Reference in the law: Section 10 of Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002. | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|-----------------------------------|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any: Not applicable. | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|----|--|
| No | |
|----|--|

What kind of problems do you face in enforcement of takeovers regulations?

The Take Over Law in Pakistan has been recently notified. So far only seven cases have been undertaken. No difficulty has been faced so far.

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what kind of issues should be presented?</p> <p>Protection of Minority Shareholders</p> <p>Adequate Disclosure Standards</p> <p>Role of Managers to the Offer</p> <p>Role of Management and Directors of the Target Company</p> <p>How to bring transparency in the takeover transaction?</p> | |

Philippines

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| Philippines | Securities and Exchange Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Securities and Exchange Commission implements the requirements on takeovers in the Philippines.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC
self-regulation issued by the market

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares? (*e.g. to inform market about changes of the structure of share ownership*)

| | |
|--|--|
| Yes | |
| <p>Comments, if any: Any person who acquires directly or indirectly the beneficial ownership of more than five per centum (5%) of such class of a publicly traded company shall within five (5) business days after such acquisition submit to the issuer of the security, to the Exchange where the security is traded, and to the Commission a sworn statement containing the required information. [Section 18 of the SRC; SRC Rule 18]</p> <p>Every person who is directly or indirectly the beneficial owner of more than ten per centum (10%) of any class of any equity security of a publicly traded company, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.</p> | |
| Reference in the law: Sections 18 and 23 of the Securities Regulation Code (SRC) | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|---|
| shares votes |
| Comments, if any: The number of shares is the basis for tender offer requirement while in merger or consolidation, the number of votes. |
| Reference in the law: Section 19 of the SRC; Title IX of the Corporation Code of the Philippines |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| 5% for narrative and more comprehensive disclosures; 10% for columnar/quantitative presentation. |
| Reference in the law: Sections 18 and 23 of the SRC |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| supervisory authority exchange a company | Deadline: within 5 business days in case of 5%; 10 days in case of 10% Deadline: within 5 business days |
| Comments, if any: “a company” above pertains to the issuer or originator of the securities. | |
| Reference in the law: Sections 18 and 23 of the SRC | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition disposal |
| Comments, if any: Both the seller and purchaser are required to submit within the prescribed periods their disclosure on the disposition and acquisition of securities, respectively. |
| Reference in the law: SRC Rules 18 and 23. |

What is the sanction in case of failure to disclose shareholding in listed companies?

A fine of up to P1,000,000.00 without prejudice to the filing of criminal charges against the individuals responsible for the violation..

Contracts or agreements executed in violation of SRC and its implementing rules and regulations are null and void.

Reference in the law: Sections 54 and 71 of the SRC

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes

Comments, if any (what would be the procedure for verification of such shareholding):
The SEC has inspection power under the Corporation Code. It can demand the company to open its stock and transfer book to verify an investor's shareholding.

Under the SRC, the SEC can also conduct verification or examination of the records of the listed or public companies.

Reference in the law: Section 74 of the Corporation Code; Sections 12 and 17 of the SRC.

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

The tender offer rule applies to acquisition by persons acting in concert. It is clearly defined in the Rule. The relationship between or among the participants is considered.

Reference in the law: SRC Rule 19

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Comments, if any: Purchasers/sellers are required to furnish the issuer/public company with a copy of the report on the acquisition of the shares.

Reference in the law: Section 18 of the SRC; SRC Rule 18

What is the source of knowledge of a company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Reports furnished by the person purchasing or selling substantial blocks of shares; |
| Every purchaser is required to have his ownership over shares registered in the company's stock and transfer books. |
| Reference in the law: Sections 18 and 23 of the SRC; Section 74 of the Corporation Code |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|--|
| Yes supervisory authority market | |
| Comments, if any (is there any special procedure for providing such information) | |
| The SEC should be informed by the public company of any acquisition or disposition of its shares that would result to a change in control. | |
| A public company is required to inform the Exchange of any 5% or 10% change in its security ownership or any acquisition/disposition by directors and officers. | |
| Reference in the law: Section 17 of the SRC; PSE Rules | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| For SEC: within five (5) days from the change in control. |
| For PSE: within five (5) business days from acquisition/disposition. |
| Reference in the law: Section 17 of the SRC; PSE Rules |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|---|
| A fine of up to P1,000,000 without prejudice to the filing of criminal charges against the individuals responsible for the violation. |
| The trading or registration of securities of the listed company may be suspended. |
| Reference in the law: Section 54 of the SRC; PSE Rules |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| If yes, what is the threshold? The thresholds of fifteen percent (15%) or more for a single acquisition or thirty percent (30%) for creeping acquisition as provided for in Section 19 of the Code had been increased to thirty five percent (35%). | |
| Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? No. | |
| Reference in the law: Sections 19 of the SRC; Section 72.1 of the SRC | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>The mandatory tender offer requirement shall not apply to the following:</p> <p>any purchase of shares from the unissued capital stock provided that the acquisition will not result to a fifty percent (50%) or more ownership of shares by the purchaser;</p> <p>any purchase of shares from an increase in authorized capital stock;</p> <p>purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;</p> <p>purchases in connection with privatization undertaken by the government of the Philippines;</p> <p>purchases in connection with corporate rehabilitation under court supervision;</p> <p>purchases through an open market at the prevailing market price;</p> <p>merger or consolidation.</p> |
| Reference in the law: Paragraph (3) of SRC Rule 19 |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| | |
|--|---|
| A. | Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) or more of equity shares in a public company shall disclose such intention and contemporaneously make a tender offer for the percent sought to all holders of such class. |
| B. | Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) or more of equity shares in a public company in one or more transactions within a period of twelve (12) months, shall be required to make a tender offer to all holders of such class. |
| C. | If any acquisition of even less than thirty five percent (35%) would result in ownership of over fifty one percent (51%) of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this Rule for all the outstanding equity securities to all remaining stockholders of the said company. |
| Reference in the law: Paragraph (2) of SRC Rule 19 | |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| Yes | |
| Comments, if any: The Rule merely requires that the price shall be supported by a fairness opinion provided by an independent financial advisor or equivalent third party. | |
| Reference in the law: SRC Rule 19 | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|--|
| Yes | |
| Comments, if any: Withdrawal of an announced tender offer would constitute misrepresentation. The penalty is up to P1,000,000.00 without prejudice to the filing of criminal charges against the individuals responsible for the violation. The Commission may nullify such private purchase. | |
| Reference in the law: Section 54 of the SRC | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

In the event the bidder in a tender offer shall increase the consideration offered after the tender offer has commenced, such bidder shall pay such increased consideration to all security holders whose tendered securities are accepted for payment by such bidder, whether or not the securities were tendered prior to the variation of the tender offer's terms.

The said change shall be published or sent or given to security holders.

Reference in the law: Section 19 of the SRC; SRC Rule 19

How is the price in a tender offer established?

Does it have to be equal for all investors?

Yes

Comments, if any: The consideration paid to any security holder pursuant to the tender offer shall be the highest consideration paid to any other security holder during such tender offer.

Reference in the law: SRC Rule 19

Is there a minimum price?

No

If yes, how it is defined *(e.g. an average market price for a given period before the announcement)*? The Rule is silent on any required minimum price but as mentioned above, the consideration paid to any security holder pursuant to the tender offer shall be the highest consideration paid to any other security holder during such tender offer.

Reference in the law: SRC Rule 19

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

No

Comments, if any: Where a mandatory tender offer is required, the bidder is compelled to offer the highest price paid by him for such shares during the past six (6) months. Where the offer involves payment by transfer or allotment of securities, such securities must be valued on an equitable basis.

Reference in the law: SRC Rule 19

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|--|--|
| No | |
| Comments, if any: This can not happen since transactions with any of the seller/s of significant blocks of shares with whom the acquirers may have been in private negotiations shall close at the same time and upon the same terms as the tender offer made to the public. | |
| Reference in the law: SRC Rule 19 | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|--------------------------------|
| Timing of activities; pricing. |
|--------------------------------|

Do you think a seminar on takeovers should be organized?

| | |
|--|--|
| Yes | |
| If yes, what kind of issues should be presented? | |
| Timing of activities; pricing; tender offer practices or regulations in other jurisdictions. | |

Poland

| Jurisdiction | Name of authority |
|--------------|---|
| Poland | Polish Securities and Exchange Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Polish Securities and Exchange Commission is responsible for takeovers in Poland.

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|--|
| Yes | |
| Comments, if any Any investor (entity), which obtains or exceeds 5% or 10% of the total number of votes at the general meeting of shareholders (GMS) by buying shares in a public company is obliged to notify the market. The notification shall contain information about the number of shares currently held, their percentage share in the initial capital and the voting rights derived from such shares and their percentage share in the total number of votes at the general meeting of shareholders. | |
| <i>Reference in the law</i> <i>(Law of the public trading of securities – article 147)</i> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

votes
Reference in the law
(Law of the public trading of securities – Article 147)

What are disclosure thresholds?
(e.g. 5%, 10%)

Any investor (entity), which obtains or exceeds 5% or 10% of the total number of votes at the GMS by buying shares in a public company or prior to the sale held shares in public company ensuring at least 5% or at least 10% of the total number of votes at the GMS and after the sale holds shares ensuring no more than 5% or no more than 10% of the total number of votes, respectively – is obliged to notify the market. The above obligation applies also to cases of acquisition and disposed of shares resulting in a change in the portion of the vote held by shareholders who originally held more than 10% of the vote, by at least: 1/ 2% of the total vote in the GMS – in the case of a public company whose shares have been approved for trade in a regulated stock exchange market, 2/ 5% of the total vote in the GMS – in the case of the other public companies. The above notification requirement applies also to investors (entities) which: 1/ as a result of acquiring the shares of a public company reached or exceeded or 2/ as a result of a disposal, became owners of shares providing them with no more than 25%, 50% or 75% respectively, of the total vote in GMS.

The above obligation shall apply as appropriate to the acquisition or sale of bonds convertible into shares approved for public trading, depository receipts as well as other securities which bear the right or obligation to buy shares approved for public trading.

Reference in the law

(Law of the public trading of securities – Article 147, 150)

Whom the investor is obliged to inform and when?

| | |
|--|------------------|
| supervisory authority | Deadline: 4 days |
| company | Deadline: 4 days |
| other | Deadline: 4 days |
| Comments, if any | |
| Investor is obliged to notify the Polish Securities and Exchange Commission (PSEC), the company and the Office for Competition and Consumer Protection within 4 days after the shares are registered on the securities account, upon the purchase or sale of stocks. | |
| Reference in the law | |
| <i>(Law of the public trading of securities – Article 147)</i> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| acquisition |
| disposal |
| Reference in the law |
| <i>(Law of the public trading of securities – Article 147, 150)</i> |

What is the sanction in case of failure to disclose shareholding in listed companies?

A fine of up to 1 000 000 PLN.

Exercising voting rights on shares acquired in violation of the disclosure requirements and without the PSEC consent is null and void.

Reference in the law

(Law of the public trading of securities – Article 156, 167)

Is the supervisory authority entitled to verify investors shareholding in listed companies?

No

Comments, if any (what would be the procedure for verification of such shareholding)

The draft Act on Public Trading in Securities has been submitted to the Parliament. The changes comprise, among others, regulations concerning verification of shareholding.

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal as to the company which shares are acquired*)?

Reference in the law

(Law of the public trading of securities – Article 158a, 4.16)

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes

Reference in the law

(Law of the public trading of securities – Article 147)

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Investor is obliged to inform the company.

Reference in the law

(Law of the public trading of securities – Article 147)

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| Yes supervisory authority market other | |
| Comments, if any (is there any special procedure for providing such information) In case of reaching or crossing by investor mentioned thresholds of number of its shares a public company is obliged to provide information to the information agency nominated by the PSEC, the company running stock exchange or the over-the-counter market. A public company is obliged to deliver to the PSEC, no later than the day before the day indicated as the day for a general meeting of shareholders, the list of shareholders entitled to participate in the said meeting, specifying the number of shares and votes to which each one of them is entitled by virtue of the shares held, Moreover, a public company is obliged to deliver, at the same time, to the PSEC and the information agency, within 14 days after general meeting of a shareholders, a list of all shareholders holding at least 5% of the total number of votes thereon, specifying the number of votes to which each of them was entitled. | |
| <i>Reference in the law</i> <i>(Law of the public trading of securities – Article 148)</i> | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| A public company is obliged to inform about the investor's acquisition of substantial blocks of its shares without delay (24 hours). |
| <i>Reference in the law</i> <i>(Law of the public trading of securities – Article 148)</i> |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|---|
| A fine of up to 1 000 000 PLN. |
| <i>Reference in the law</i> <i>(Law of the public trading of securities – Article 167)</i> |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|--|
| Yes | |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>Any person who has come into the ownership of shares of a public company or of depository receipts issued in connection with such shares, in a number providing such a person with over 50% of the total votes on the GMS shall: 1/ announce a tender offer to subscribe for the sale of the remaining shares of this company or 2/ sell that number of shares yielding a holding of no more than 50% of the total vote in the GMS.</p> | |
| <p><i>Reference in the law</i> <i>(Law of the public trading of securities – Article 154)</i></p> | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>The company is not obliged to announce a tender offer after exceeding a certain threshold of shares when shares are purchased directly from the State Treasury, or as a result of performing a contract with the State Treasury concluded during the process of privatisation and which imposes the obligation to take up new issues of shares.</p> |
| <p><i>Reference in the law</i> <i>(Law of the public trading of securities – Article 158)</i></p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

In case of tender offer after exceeding 50% of votes investor is required to announce tender offer to subscribe for the sale of all remaining shares (art. 154).

The acquisition of shares approved for public trading or depository receipts issued in connection with such shares constituting at least 10% of the total number of votes within a period of less than 90 days under secondary distribution may be effected only as a result of announcing a public offer to subscribe for the sale or conversion of equities.

The obligation to issue an offer will not arise in the case of acquiring a public company's shares approved for trade exclusively in an unofficial over-the-counter market.

Reference in the law

(Law of the public trading of securities – Article 154,151)

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes

Comments, if any

The tender offer shall be announced after collateralising 100% of the value of the shares to be acquired. The collateral so instituted should be documented with a certificate from a bank or another relevant institution.

Reference in the law

(Law of the public trading of securities – Article 151, 86)

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Yes

Comments, if any

The retraction of the tender offer is not permissible unless another entity announces a tender offer relating to the same shares.

Sanction: a fine of up to 1 000 000 PLN.

Reference in the law

(Law of the public trading of securities – Article 152, 170)

What are the conditions for the changing of the takeovers bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

The entity purchasing shares may, within the time limit for conducting the invitation, change the price at which shares are to be purchased or change the exchange parity.

Reference in the law

Decree of the Council of Ministers of 17 July 2001 (Journal of Laws No. 86, item 941)
§ 4., § 14.

How is the price in a tender offer established?

Does it have to be equal for all investors?

Yes

Comments, if any

The entity purchasing shares may differentiate the price or exchange parity only due to the rights attached to shares.

Reference in the law

Decree of the Council of Ministers of 17 July 2001 (Journal of Laws No. 86, item 941)
§ 14.

Is there a minimum price?

Yes

If yes, how it is defined (e.g. an average market price for a given period before the announcement)?

The price offered in the tender offer may not be lower than: 1/ the average market price for the last six months before the announcement of the tender offer or – if the shares included in the tender offer were traded on a regulated market for less than six months – the average over this shorter period, 2/ which have entered into an understanding concerning the joint acquisition of shares of the public company or the depository receipts issued in connection with such shares, or the concerted voting of the company's shareholders in the general meeting of shareholders on matters of significance for the company, the pursuit of a long-term joint policy regarding the company's management - the price, at which the shares were purchased under primary trading or the initial public offering – if the tender offer relates to shares which are not traded on a regulated market.

See also answer to question 7.3

Reference in the law
(*Law of the public trading of securities – Article 155*)

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

No

Comments, if any

The price may not be lower than the highest price paid, within 12 months prior to the announcement of the tender offer, for shares which were the subject matter of the tender offer by the tendering entity or by entities which: 1/ are its direct or indirect subsidiaries or its direct or indirect parent companies, or 2/ by entities acting in concert.

Reference in the law
(*Law of the public trading of securities – Article 155*)

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the takeovers differ from the price offered in the takeovers process*)

No

What kind of problems do you face in enforcement of takeovers regulations?

Acting in concert issues.

Do you think a seminar on takeovers should be organized?

Yes

If yes, what kind of issues should be presented?

The following issues would be presented:
Acting in concert
Capital groups
Enforcement of disclosure requirements

Romania

| Jurisdiction | Name of authority |
|--------------|--|
| ROMANIA | ROMANIAN NATIONAL SECURITIES COMMISSION (CNVM) |

Which authority is responsible for takeovers in your jurisdiction?

ROMANIAN NATIONAL SECURITIES COMMISSION

What regulations address the problem of takeovers?

laws issued by President/Parliament
implementing regulations issued by Government/SEC
self-regulation issued by the market
articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| The investors are required to inform the issuer, the CNVM and the regulated market about acquisition of substantial blocks of shares. | |
| Reference in the law | |
| Article 228 of the Law no. 297/2004 on capital market | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

shares
votes

| |
|---|
| <p>Comments, if any</p> <p>As a result of an acquisition or purchase of securities issued by a publicly-held company, the percentage of voting rights held by a person reaches, exceeds or falls under one of the thresholds/values of 5%, 10%, 20%, 33%, 50%, 75% or 90% of the total shares, that person shall have the obligation to inform, at the same time, the issuer, the CNVM and the regulated market on which these securities are traded within maximum three business days from the completion of the subject transaction.</p> |
| <p>Reference in the law</p> <p>Article 228 of the Law no. 297/2004 on capital market</p> |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| <p>The disclosure thresholds are the followings: 5%, 10%, 20%, 33%, 50%, 75% or 90% representing the percentage of voting rights of the total shares.</p> |
| <p>Reference in the law</p> <p>Article 228 of the Law no. 297/2004 on capital market</p> |

Whom the investor is obliged to inform and when?

| | |
|--|--|
| <p>supervisory authority</p> <p>exchange</p> <p>news agency</p> <p>a company</p> <p>other</p> | <p>Deadline _3 business days_____</p> <p>Deadline _3 business days_____</p> <p>Deadline _____</p> <p>Deadline _____</p> <p>Deadline _3 business days _____</p> |
| <p>Comments, if any</p> <p>The investor has to inform the CNVM, the issuer and the regulated market in three business days from the completion of the operation.</p> | |
| <p>Reference in the law</p> <p>Article 228 of the Law no. 297/2004 on capital market</p> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| <p>acquisition</p> <p>disposal</p> <p>both</p> |
|--|

| |
|--|
| Comments, if any |
| Requirements are related both to acquisition and disposal of shares. |
| Reference in the law |
| Article 228 of the Law 297/2004 on capital market |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| <p>The sanctions that can be applied in case of the infringement of the provisions of Law no. 297/2004 on capital market (including the provisions regarding the obligation to disclose the shareholdings in publicly-owned companies) are warnings and fines, as follows:</p> <p>between 0,5% and 5% of the paid share capital for legal persons.</p> <p>between 5.000.000 ROL and 500.000.000 ROL for natural persons. The amount of fines will be updated through the CNVM's president order.</p> <p>Complementary sanctions are applied as the case may be:</p> <p>suspension of authorisation;</p> <p>withdrawal of authorisation;</p> <p>temporary prohibition from carrying out certain activities and services which are subject to this law.</p> |
| Reference in the law |
| Articles 273 and 276 of the Law no. 297/2004 on capital market |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| <p>The Central Depository is the entity authorised and supervised by CNVM which deposits all classes of securities traded on a regulated market and alternative trading systems in order to ensure the consistent recording of the operations.</p> <p>In order to determine the shareholder structure of an issuer at a certain reference date, intermediaries shall report to the Central Depository the holders of each individual sub-account. C.N.V.M. may require the central depository to periodically send data, information and documents, may organize inspections at the premise of the central depository and may request to be provided with all the necessary documents, including their procedures and terms for their delivery.</p> | |
| Reference in the law | |
| Articles 146, point (6), 147 and 154 of the Law no. 297/2004 on capital market | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

In accordance with the Law no. 297/2004 on capital market, „persons acting in concert” mean two or more persons, linked by a concluded agreement or by a gentlemen’s agreement in order to enforce a common policy regarding an issuer. The following persons are presumed to act in concert, if no adverse evidence is in place:

involved persons;

the parent company together with its subsidiaries, as well as any of the subsidiaries of the same parent company among themselves;

a firm with its Board members and with the involved persons, as well as these persons among themselves;

a firm with its pension funds and with the management company of these funds;”

Also, in accordance with the Law no. 297/2004 on capital market group means „an association of companies made up of a parent company, its subsidiaries and the entities where the parent company or its branches hold equity participation, as well as companies tied together by a relationship that requires account consolidation and annual report consolidation ;”

Reference in the law

Article 2 points 23 and 9 of the Law no. 297/2004 on capital market

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>As a result of an acquisition or purchase of securities issued by a publicly-held company, the percentage of voting rights held by a person reaches, exceeds or falls under one of the thresholds/values of 5%, 10%, 20%, 33%, 50%, 75% or 90% of the total shares, that person shall have the obligation to inform, at the same time, the issuer, the CNVM and the regulated market on which these securities are traded within maximum three business days from the completion of the subject transaction.</p> | |
| <p>Reference in the law</p> <p>Article 228 of the Law no. 297/2004 on capital market</p> | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

We understand that the meaning is „of the given company”.
Please see the response in the Section 1, question 2.

Reference in the law

Articles 228 of the Law. 297/2004 on capital market and Article 88(2) of the Regulation on issuers and securities operations

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|-----------------------------|
| Yes supervisory authority market investors other | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) The company admitted to trading on a regulated market has to inform the public in three working days about acquiring or disposing of substantial blocks of shares by an investor. | |
| Reference in the law Article 228, point (3) of the Law no. 297/2004 on capital market | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

The public company is obliged to inform the public about substantial acquisitions or disposal of shares in three business days.

Reference in the law

Article 228 of the Law no. 297/2004 on capital market

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

The sanctions that can be applied in case of the infringement of the provisions of Law no. 297/2004 on capital market (including the provisions regarding the obligation to disclose the shareholdings in publicly-owned companies) are warnings and fines, as follows:
between 0,5% and 5% of the paid share capital for legal persons.
between 5.000.000 ROL and 500.000.000 ROL for natural persons. The amount of fines will be updated through the CNVM's president order.

Complementary sanctions are applied as the case may be:
suspension of authorisation;
withdrawal of authorisation;
temporary prohibition from carrying out certain activities and services which are subject to this law.

Reference in the law

Articles 273 and 276 of the Law no. 297/2004 on capital market

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?</p> <p><i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investors, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>A person who, as a result of his purchase or those of the persons acting in concert with, holds more than 33% of the voting rights in an undertaking must launch a public offer addressed to all securities holders for all their holdings as soon as possible, but no later than 2 months from reaching this holding position.</p> | |
| Reference in the law | |
| Article 203 of the Law. No.297/2004 on capital market | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The provision mentioned above shall not apply in case of an *excepted transaction* that represents the acquisition of more than 33% of voting rights:

- within the privatization process;
- by share acquisition from the Ministry of Public Finance or from other entities legally enabled within the budget claims collection procedures;
- following the transfer of shares between the parent undertaking and its subsidiaries or between the subsidiaries of the same parent undertaking;
- following a voluntary takeover public bid addressed to all the holders of those securities and for all their holdings.

If the acquisition of the holding position accounting for more than 33% of the voting rights against the issuer is made unintentionally, the holder of such a holding position has one of the following alternative obligations:

to make a public offer

to sell a number of shares corresponding to the loss of the position acquired without intention.

In the context of Law no. 297/2004 on capital market, the acquisition is considered unintentional, if it has been carried out as a result of certain operations such as:

the reduction of capital through redemption by the company of its own shares, followed by their annulment;

exceeding the threshold as a result of exercising pre-emptive rights or the subscription or conversion of the rights originally allotted, as well as the conversion of preferred shares into common shares;

Reference in the law

Article 205, points (2), (3), (5) of the Law no. 297/2004 on capital market

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

A person who, as a result of his purchase or those of the persons acting in concert with, holds more than 33% of the voting rights in an undertaking must launch a public offer addressed to all securities holders for all their holdings as soon as possible, but no later than 2 months from reaching this holding position.

Until the public offer referred to above is made, all the rights underlying the securities which exceed 33% of the voting rights against the issuer, are suspended, and the said shareholder and the persons acting in concert with may no longer purchase, by other operations, the shares of the same issuer.

Reference in the law

Article 203, points (1) and (2) of the Law no. 297/2004 on capital market

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|---|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any Provisions regarding the requiring of a collateral for a tender offer are provided in the secondary legislation. <i>The upcoming regulation on issuers and securities operations reffers to a collateral representing at least 30% from the total value of securities which are intended to be aquired in a bank account of the intermediary or in a banking trust letter which covers the entire amount of the offer.</i> | |
| Reference in the law Article 56, letter (d) of the draft Regulation on issuers and securities operations | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any The withdrawal by the offeror of an announced tender offer is not allowed. The offer becomes mandatory on the date of publishing the announcement. CNVM may order the withdrawal of the approval decision, if it finds out that the public offer is made by the infringement of the provisions of this law or of the regulations issued by C.N.V.M. . <i>The upcoming regulation on issuers and securities operations stipulates in article 53(4) that the offer is irrevocable for the entire period of its undertake.</i> | |
| Reference in the law Articles 176, 180, letter (f) of the Capital market no. 297/2004 on capital market and article 53(4) of the draft Regulation on issuers and securities operations. | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Any significant new event or the modification of the original information presented by the prospectus or by the offer document, which is capable of affecting the investment decision, during the time when the offer is valid, shall be included in a supplement.

This supplement shall be approved by C.N.V.M. within maximum 7 working days and shall be made available to the public by an announcement. These procedures shall be established through CNVM Regulation.

Thus, in accordance with the draft Regulation on issuers and securities operations ” Any amendment referred to a purchase/take over bid whose offer document was approved shall be submitted to CNVM in at least 5 working days before closing the offer. In case of approving the amendments related to price or other elements of the offer documents, except the offer closing term, CNVM shall dispose the extend of the public offer period, so as to exist at least 5 working days from the date of publishing the amendment until the closing of the offer.”

Reference in the law

Article 179 of the Law no. 297/2004 on capital market and article 67(2) of the draft Regulation on issuers and securities operations

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| The price in a tender offer has to be equal for all the investors. Public offers must be made under conditions which to ensure the equal treatment of all investors. | |
| Reference in the law | |
| Law no. 297/2004 on capital market | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>In case of a mandatory public offer the price offered shall be at least equal to the highest price paid by the offeror or by the persons with whom he acts jointly within the 12 months prior to the offer.</p> <p>If the provision laid down above cannot be applied, the price offered shall be determined in accordance with C.N.V.M. provisions, at least taking into account the following criteria:</p> <ul style="list-style-type: none"> the weighted average trading price underlying the last 12 months prior to the offer being made; the value of the company's net assets according to the latest audited financial statements; the value of the shares, as resulted by an expertise, made by an independent auditor, in accordance with the international valuation standards <p>In accordance with the provisions of the draft Regulation on issuers and securities operations "the price of the take over bid shall be at least equal to the highest price paid by the offeror or the persons acting in concert with him/her during the period of 12 months prior to the publishing date of the preliminary announcement".</p> | |
| <p>Reference in the law</p> <p>Articles 199(3) and 204 of the Law no.297/2004 on capital market and Article 58(1) and (4) of the Regulation on issuers and securities</p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| <p>Comments, if any:</p> <p>The offered price shall be at least equal to the maximum price paid by the offeror or by the persons acting in concert with over the last twelve month previous to launching the offering. In other cases, the offered price shall be established according to the CNVM regulations, taking into consideration the following criteria:</p> <ul style="list-style-type: none"> the average weighted transaction price for the last 12 month previous to developing the offering the net asset value of the company according to the last financial statement. | |
| <p>Reference in the law:</p> <p>Article 204 of Law no. 297/2004 on capital market and the Article 58 of the Regulations on issuers and securities operations</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|-----------|
| No answer |
|-----------|

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what kind of issues should be presented?</p> <p>Yes, we consider that a seminar on takeovers will be welcomed. The issues to be presented: - hostile takeovers and – the rules and procedures of the markets regarding the development of the offer.</p> | |

Slovenia

| Jurisdiction | Name of authority |
|--------------|--------------------------|
| SLOVENIA | SECURITIES MARKET AGENCY |

Which authority is responsible for takeovers in your jurisdiction?

SECURITIES MARKET AGENCY (AGENCY)

What regulations address the problem of takeovers?

X laws issued by President/*PARLIAMENT*
 X implementing regulations issued by Government/*SECURITIES MARKET AGENCY*
 self-regulation issued by the market
 articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any; Under the law, each time when individual persons, indirectly or directly, acquire 5 per cent of the total shares or other securities with a voting right, and for every additional 5 per cent of the aforementioned securities (hereinafter: qualified stake), they must notify the issuer of these securities and the Agency of this within three working days of the day they find out or were supposed to find out that they are holders of a qualified stake.</p> <p>The issuer who has received the notification specified in the preceding paragraph must publish the notification within three working days of the receipt of the notification.</p> | |
| <p>Reference in the law THE TAKEOVERS ACT (Official Gazette of the Republic of Slovenia, No. 47/97), Article 64</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| shares <input type="checkbox"/> votes The requirement applies to the shares holding voting rights. |
| Comments, if any |
| Reference in the law; Takeovers Act, Article 64 |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| 5% and each additional 5% of the shares holding voting rights |
| Reference in the law; the Takeover Act, Article 64 |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| x supervisory authority, THE AGENCY exchange news agency X a company (issuer of securities) other | Deadline 3 days maximum Deadline _____ Deadline _____ Deadline 3 days maximum Deadline _____ |
| Comments, if any A company (issuer of securities) has to publish information max 3 days after the receipt of notification of the buyer of a qualified stake. | |
| Reference in the law; the Takeover Act, Article 64 | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| x acquisition disposal both |
| Comments, if any |
| Reference in the law (see the above reference) |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| <p>If the persons who are holders of a qualified stake do not notify the issuer and the Agency in accordance with the preceding article, they shall not have the right to vote, i.e. to participate in the management of the company/issuer of these shares, with the shares that exceed the qualified stake.</p> |
| <p>Reference in the law; the Takeover Act, Article 65</p> |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| <p>Comments, if any (what would be the procedure for verification of such shareholding)</p> <p>The Agency has a possibility to ask a company to notify on qualified stake the company and the Agency if it finds out that fact. Namely the Agency is able to check the ownership structure directly from the system kept and ran by the Central Securities Clearing Company (KDD). All the securities publicly traded, all banks', investment firms', insurance companies' and many other companies' shares are issued in dematerialised, book-entry form by the KDD. The Agency supervises KDD and has direct access to its data.</p> <p>However the Agency monitors and controls the shareholders structures of public companies and other companies of its interest (in accordance with Agency's supervisory activities) directly through connection to the KDD register of dematerialised securities (either the data on TOP 50 holders of securities or the complete shareholders and bondholders lists).</p> <p>According to the Takeover Act Legal persons or individuals are liable to a fine of no less than SIT 300,000 for the infringement in case a person who does not notify the Agency and a company on a qualified stake within 3 days from acquisition of the stake (or 3 days from the day it should know of the fact that it holds a qualified stake).</p> | |
| <p>Reference in the law; Takeover Act, Article 86.</p> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

If on the basis of a shareholding agreement or otherwise, several persons act together in exercising their voting rights arising from the shares of an individual company/issuer, and if anyone of them acquires a joint-stock company's securities with voting rights in such a way that these securities, together with those that these persons already own, give them 25 per cent of the voting rights, every person shall be under the obligation to put forward a securities bid, unless they reach an agreement that only one of them will do so.

Reference in the law; the Takeovers Act, Article 60

Public company disclosure obligations
(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any If this relates to notification of a qualified stake by the buyer, than the answer is yes. | |
| Reference in the law; Takeovers Act, Article 64. | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The source would be a notification. It is however possible to follow changes in the shareholder register daily to be aware of the changes in ownership. For the reference, there is a T+2 settlement and all the trades executed on organized securities market are by the end of trading day transferred to the KDD directly for settlement.

Reference in the law; Takeovers Act, Article 64

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> supervisory authority market investors <input checked="" type="checkbox"/> other – so called target company (the issuer of shares) | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) | |
| Reference in the law Please refer to the above explanations. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

Public company is obliged to inform public maximum 3 days after the receipt of notification of a qualified stake from the investor

Reference in the law; Takeovers Act, Article 64, paragraph 2.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

The Takeovers Act defines sanction in case investor fails to notify the Agency and the issuer on qualified stake.
 Public companies are obliged to report all relevant and important information on their operations in accordance with the Securities Market Act, among them is also a qualified stake. The obligation to publicly disclose this information is defined in this regulation.

Reference in the law; Securities Market Act, Article 66, and the by-law on public companies reporting issued by the Agency on the basis of this Act (Public companies reporting duties).

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> 25% | No <input type="checkbox"/> |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>It is obligation for each person that acquires shares with voting rights with minimum 25% of all voting rights, no matter how the shares have been acquired (actively or passively alike).</p> | |
| Reference in the law; the Takeovers Act, Article 4 | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>The securities bid is not necessary if:</p> <p>the securities have been acquired on the basis of an unpaid transaction between natural persons;</p> <p>a person has acquired the securities specified in Article 4 of this law in the implementation of a merger or disassociation of a joint-stock company by acquiring securities held by the legal person who ceased to exist due to the merger or disassociation;</p> <p>if, in accordance with this law, a person has already acquired at least 45 per cent of the securities specified in the second paragraph of Article 4 of this law on the basis of one or more securities bids.</p> |
| Reference in the law; the Takeovers Act, Article 13 |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

The offer must be announced for all the remaining shares ("securities bid shall be deemed to be the published proposal for the conclusion of a contract on the sale of securities of a specific company/issuer, addressed to all holders of this type of security").

Reference in the law; the Takeovers Act, Article 7, paragraph 1

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any; Prior to the publication of the securities bid, the bidder must deposit the amount of money required for the payment of all the securities that are the subject of the securities bid in the special account of the clearing and deposit company (KDD).</p> <p>(2) In the case of a combined offer, the bidder must, prior to the publication of the securities bid, deposit the amount of money required for the payment of the part of the price that is paid in cash at the clearing and deposit company.</p> <p>(3) In the case of an alternative offer, the bidder must, prior to the publication of the securities bid, deposit the amount of cash required for the payment of all securities that are the subject of the securities bid at the clearing and deposit company, if all the holders of securities take the decision to be paid in cash.</p> <p>(4) Instead of depositing the amount of money as specified in the first, second and third paragraphs of the article, the bidder may submit to the clearing and deposit company a bank guarantee issued by a bank based in the Republic of Slovenia or in a Member State of the European Union, through which the bank irrevocably obliges itself, upon the first request from the clearing and deposit company and without objections, to pay into the special account of the clearing and deposit company the amount of money required for the fulfilment of the obligations related to the payment to the holders of securities who accepted the securities bid, with a validity of at least 30 days after the expiry of the time-limit for payment.</p> | |
| Reference in the law; the Takeover Act, Article 29 | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any; If the bidder, after the notification specified in Article 15 of this law, abandons his intention to publish a securities bid, he may not publish a new securities bid for a period of one year after abandoning his intention to publish a securities bid, unless he has obtained the agency's consent to abandon the intention to publish a securities bid. | |
| Reference in the law; the Takeover Act, Article 18 | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|---|
| <p>If the bidder changes his securities bid in such a way as to offer a higher price or more favourable exchange ratio when substitute securities are being offered, he must publish these changes seven days before the expiry of the time-limit of the offer at the latest and, prior to publishing the changed offer, must notify the Agency and the clearing and deposit company of the changes.</p> <p>If the bidder changes the securities bid, he shall be under obligation to pay an additional deposit in the amount of the difference between the changed price and the initial price in the period specified in the preceding paragraph, in the method specified in Article 29 of this law.</p> <p>If the bidder changes his securities bid, the persons who have already accepted the previous offer are justified in abandoning the concluded contract and accepting the changed securities bid.</p> <p>With the exception of the change specified in the first paragraph of this article, the bidder may not change the offer or the conditions for the securities bid.</p> |
| Reference in the law, the Takeover Act, Article 22 |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any; (3) The price or exchange ratio of the substitute securities, set by the bidder in the securities bid, must be the same for all securities of the same class or type of securities that are the subject of the securities bid.</p> <p>If in the six months prior to the publication of the securities bid the bidder has acquired more than 10 per cent of the total issue of securities that are the subject of the securities bid, the bidder must offer at least the same conditions that were offered for the acquisition of securities in the six months prior to the publication of the securities bid.</p> <p>If prior to the publication of the securities bid the bidder, contrary to this law, has acquired more than 25 per cent of the total issue of the securities that are the subject of the securities bid, the bidder must offer the highest price that he paid for any acquisition of securities after he acquired 25 per cent of the securities that are the subject of the securities bid.</p> | |
| Reference in the law; the Takeover Act, Article 7, paragraphs 3,4,5. | |

Is there a minimum price?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> | |
| Reference in the law; please refer to 7.1. | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| <p>Comments, if any; please refer to answer under 7.1.</p> | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any; there is no such requirement under the current regulation in force. | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---|
| There are some points that the Takeover Act does not cover sufficiently and they are being considered in the process of the law amendments and changes that are currently taking place. |
|---|

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? | |
| The exchange of experience in the process of takeovers licensing and supervision. | |

South Africa

| Jurisdiction | Name of authority |
|--------------|-----------------------------|
| South Africa | Securities Regulation Panel |

Which authority is responsible for takeovers in your jurisdiction?

The Securities Regulation Panel (“SRP”). The SRP forms part of the Department of Trade and Industry. The SRP has been constituted in terms of section 440B of The South African Companies Act No 61 of 1973 (“the Act”)

What regulations address the problem of takeovers?

-The South African Companies Act No 61 of 1973
-The Securities Regulation Code on Mergers and Takeovers (the Code) made by the SRP and approved by the Minister of Trade and Industry.

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|--|
| No | |
| <p>Comments, if any.</p> <p>Generally investors are not required to inform the SRP on buying of their shares /securities. However should any investor acquire more than 35% of the voting securities of company, he will be obliged to comply with Rule 2.3 under section D of the Code and Rule 8 under section F of the Code by making the necessary announcement and thereafter making a mandatory offer to the shareholders of the relevant company to acquire their shares at the price at which he acquired the number of shares exceeding 35%.</p> <p>N.B The comment made in this questionnaire does not necessarily cover the requirements in respect of companies listed on the JSE Securities Exchange South Africa (“ the JSE”). Information in this respect may be obtained directly from the JSE at www.jse.co.za.</p> | |
| <p>Reference in the law</p> <p>-Section 440A of the Act -Rule 2.3 under section D of the Code and Rule 8 under Section F of the Code</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| The requirements are related to the voting rights to which the shares entitle the holder to exercise at company meetings. |
|---|

Reference in the law

-Section 440A of the Act and Rule 1 under section B of the Code.

What are disclosure thresholds?

(e.g. 5%, 10%)

None. However see paragraph 1 above.

Whom the investor is obliged to inform and when?

| | |
|-------------------|--|
| See par. 1 above. | |
|-------------------|--|

Comments, if any

In terms of section 140A of the Act, a registered shareholder is required to disclose any shareholdings in any listed company, the names of the beneficial owners of the shares of the listed company every three months. Further, a listed company is entitled to request a registered owner to disclose the names of such beneficial owners by sending a notice to the registered shareholder. Failure on the part of the registered shareholder to comply with this provision is an offence and the registered shareholder may be fined.

See also par. 1 above

Reference in the law

See par. 1 above

Section 140A of the Act

Are the requirements related to acquisition or to disposal of shares?

The requirements may in certain circumstances relate to both the acquisition and disposal of the shares.

| |
|--|
| Comments, if any |
| Where a company disposes its shares in another company, the shares, which constitute more than the major assets or business undertaking of the disposing company, the company doing the disposal is obliged to inform its shareholders and get their approval for such a disposal. Where there is an acquisition, Rules 2.3 under section D and Rule 8 under section F of the Code may be applicable as described under par 1 above. |
| Reference in the law |
| -Section 228 of the Act in respect of the disposal. -Rules 2.3 and 8 of the Code, as described above in par. 1 |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--------------------------------------|
| Answers may be obtained from the JSE |
| Reference in the law |

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|---|--|
| Yes | |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| The SRP is entitled to summon any person who is believed to be able to furnish any information on the subject of the investigation. Such a person may be required to produce any book or document relating to shareholdings such as a share register. | |
| Reference in the law | |
| Section 440D of the Act | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

Concert party activity is regulated on an ad-hoc basis and is subject to the same general and specific rules as other takeover transactions. Each concert activity is treated on its own merit. Where parties are alleged to be acting in concert and the SRP after investigation find the existence of such a conduct they are obliged to comply with the rules of the Code to the same extent as any party proposing a takeover of any company.

The SRP is currently considering specific guidelines for regulation of concert party activity. These guidelines are likely to follow those published by the London Takeover Panel.

Reference in the law

- Section 440A(1) of the Act
- Rules 1 and 2 under section B of the Code

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

Yes and No

Comments, if any

Company may or may not be informed about the acquisition of a given company depending on the circumstance of each case. See par 5 in Part I above.

See also par. 4 under part I above

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

JSE News Service where applicable.
Annual financial statements of the given company where relevant.
Disclosure requirements of the Act

Reference in the law

Section 104 of the Act
Section 113 of the Act
Section 140A of the Act
And The Listings Requirements of the JSE where applicable.

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|-------------|
| <p>Yes X</p> <p>SRP The market through JSE News Service Investors through circulars Financial publications</p> | <p>No X</p> |
| <p>Comments, if any</p> <p>A company may be required to inform the market, the SRP, the JSE and its investors where applicable such as in the circumstances referred to in Par. 1 of Part I of the questionnaire. The JSE in addition may have its own additional requirements.</p> | |
| <p>Reference in the law</p> <p>See Par. 1 under part I above</p> | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|---|
| <p>No specific deadline has been set in the Code. However, the Code requires that the Board of the companies to inform the SRP immediately after making such an acquisition or after entering into a disposal agreement as the case might be.</p> |
| <p>Reference in the law</p> <p>Rule 2.2 and 2.3 under section D of the Code</p> |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

| |
|--|
| <p>There are no sanctions currently. However the Panel may approach the Court to enforce compliance with the Code.</p> |
| <p>Reference in the law</p> <p>Section 440M of the Act.</p> |

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p><i>An investor who acquires more than 35% of the voting securities of a company is obliged to make an offer to the remaining shareholders of the company. This rule is also applicable even in case of repurchase of shares by a company. However, in that case, the SRP may exempt the investor from having to make an offer to the other shareholders depending on the circumstances of the case.</i></p> <p><i>An investor who holds between 35% and 50% of the voting securities of a company will also be obliged to make an offer to the remaining shareholders of the company if he acquires 5% or more of the voting securities of the company in any period of 12 month.</i></p> | |
| Reference in the law | |
| Rule 8.1 under section F of the Code | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>An investor may be exempted from making a mandatory offer where the SRP considers that the company is in dire financial state and the investor is rescuing the company from a possible liquidation.</p> <p>In addition where the issue of new shares for a cash consideration will result in the crossing of the threshold and the independent shareholders at a general meeting passes a resolution waiving their rights to receive the offer, the SRP will exempt the investor from making such an offer.</p> <p>An investor may also be exempted from making an offer where he underwrites an issue of securities and the independent shareholders pass a resolution waiving their rights to such an offer.</p> |
| Reference in the law |
| Rule 8.7 under section F of the Code and Rule 34 under section P of the Code. |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Yes. An investor may make partial offer to acquire a stated percentage of each shareholder's holding of the securities of a company, such that at the end of the offer period he holds x% of the shares of the company. In such a case the investor will ensure that it is a condition precedent of the offer that he acquires x% of the voting securities of the company and should that not be the case the offer will lapse and each shareholder will revert to the status quo ante.

It should be noted that in case where the investor make an offer for a part of the securities of a company, should he in the process of acquiring that portion cross the thresholds referred to above in par.1 of part III above he will be obliged to make an offer to acquire all remaining securities of the company unless the independent shareholders vote to waive their rights to that offer.

Reference in the law

Rule 32.2 under section N of the Code and Rules 8.1 and 8.7 under section F of the Code.

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☒

No ☐

Comments, if any

An investor wishing to announce a cash offer will be required to produce a guarantee or a letter from a third party confirming that the investor has the financial resources in order to continue and complete the offer. (The SRP must approve the guarantee or the letter before approval of the announcement will be made.)

.

Reference in the law

Rule 2.3.2(b) under section D of the Code and Rule 21.7 under section I of the Code

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>An announcement for withdrawal of an offer is only allowed in exceptional circumstances with the consent of the SRP. Consent will only be given where the SRP considers that the enforcement of an offer may operate harshly on the investor among other instances. The decision of the SRP will depend on the facts of each case.</p> <p>In addition where the investor has reserved conditions to the making of the offer and those conditions have not been fulfilled, he may withdraw the offer.</p> | |
| <p>Reference in the law</p> <p>Rule 2.3.3 under section D of the Code.</p> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer cannot be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|--|
| <p>The offer consideration made for the securities of the company may not be reduced during a takeover. An increase in the offer consideration is encouraged.</p> <p>-In addition all shareholders who have already accepted the earlier offer consideration are entitled to the increased consideration.</p> <p>-Further, the offer period shall be kept open for a further period of 21 days after the date of revision.</p> |
| <p>Reference in the law</p> <p>Rules 30.1 and 30.3 under section M of the Code</p> |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>The Offeror establishes the consideration. The offer is made to all the shareholders at the same or comparable consideration.</p> <p>However this does not prevent an investor and a shareholder from agreeing to a lower price by means of a private treaty provided that the shareholder is fully aware of his rights and there are no special deals with favourable conditions between the parties that are not extended to other shareholders.</p> | |
| <p>Reference in the law</p> <p>General principles of the Code under section C of the Code Rules 5, under section E of the Code Rule 8.1 under section F of the Code Rules 11 and 12 under section H of the Code Rule 13 under section G of the Code</p> | |

Is there a minimum price?

| | |
|--|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| <p>The minimum price is the highest price that the investor paid in the preceding 3 months before the offer period. The SRP is entitled to extend this period beyond the 3 months if the circumstances render it necessary to give effect to the principle of equality of treatment of shareholders.</p> | |
| <p>Reference in the law</p> <p>Rule 5 under section E of the Code</p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|------------------------------------|--|
| Yes X | |
| Comments, if any | |
| However see par. 7.1 and 7.2 above | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|--|----|
| Yes X | No |
| Comments, if any | |
| There is no restriction on the additional acquisition shares following completion an offer . However, the same Offeror may not extend a new offer within 12 months of a lapsing or withdrawal of the offer unless the SRP agrees | |
| Reference in the law | |
| Rule 32.1 under section N of the Code | |

What kind of problems do you face in enforcement of takeovers regulations?

-Poor notification of takeover/mergers activities
 -Concert party activity
 -Timely compliance with the rules
 -Lack of sanctions for non-compliance.
 -Lack of flexibility in regulation of takeovers/mergers due to the statutory nature of the regulation

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? | |
| -Regulation of concert party activity -Enforcement of compliance with takeover/mergers rules | |
| Comments | |
| A conference of regulators of takeovers and mergers was held in Australia during 2002 and a further conference was proposed to be held at a date yet to be determined. | |

Sri Lanka

| Jurisdiction | Name of authority |
|--------------|---|
| Sri Lanka | Securities and Exchange Commission of Sri Lanka |

Which authority is responsible for takeovers in your jurisdiction?

Securities and Exchange Commission of Sri Lanka

What regulations address the problem of takeovers?

- ☐ laws issued by President/Parliament
- *implementing regulations issued by Government/SEC
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(Obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| Comments, if any Any person or persons acting in concert with such person who acquire or hold ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition. | |
| Reference in the law Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|--|
| <input checked="" type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any <i>Shares that carry voting rights</i> |
| Reference in the law Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| 10% |
| Reference in the law Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 |

Whom the investor is obliged to inform and when?

| | |
|--|---|
| <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> exchange <input checked="" type="checkbox"/> news agency <input checked="" type="checkbox"/> a company <input type="checkbox"/> other | Deadline _within two market days of acquisition Deadline _within two market days of acquisition Deadline _____ Deadline _within two market days of acquisition Deadline _____ |
| Comments, if any Any person or persons acting in concert with such person who acquire or hold ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition. | |
| Reference in the law Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| <p>*acquisition</p> <p><input type="checkbox"/> disposal</p> <p><input type="checkbox"/> both</p> |
| <p>Comments, if any</p> <p>Any person or persons acting in concert with such person who acquire or hold ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition.</p> |
| <p>Reference in the law</p> <p>Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003</p> |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| <p>Any Person who contravenes any provision of the SEC Act or any requirement imposed under the provisions of the SEC Act or of any regulation or rules made under the said Act shall be guilty of an offence.</p> <p>Any person who is found guilty of an offence for which no penalty is expressly provided for under the said SEC Act, shall be liable on conviction after summary trial by a Magistrate to imprisonment of either description for a period not exceeding five years or to a fine not less than fifty thousand rupees and not exceeding ten million rupees or to both such imprisonment and fine.</p> |
| <p>Reference in the law</p> <p>Takeover and Mergers Code is gazetted as Rules made under the SEC Act.</p> <p>Section 51 of the Securities and Exchange Commission Act No. 36 of 1987 as amended by Act No's 26 of 1991 and 18 of 2003</p> |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| <p>Comments, if any (what would be the procedure for verification of such shareholding)</p> <p><i>Call for information from the relevant party or inspect any document of a listed company</i></p> | |
| <p>Reference in the law</p> <p>Section 45 and 46 of the Securities and Exchange Commission Act No. 36 of 1987 as amended by Act No's 26 of 1991 and 18 of 2003</p> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

any person acting in concert" means an individual or a company and their nominees who, pursuant to an agreement or understanding (whether formal or informal) actively co-operate, through the acquisition by any of them of shares in a company, to obtain or consolidate control of that company, and include the following :

- (a) a company, its parent company, any subsidiary company and any subsidiary of any such subsidiary company, and any company in which such parent or subsidiary company owns or controls twenty per centum or more of the equity shares of that company, and any company in which twenty per centum or more of the equity shares are owned by the last-mentioned company, each with the other;
- (b) a company with any of its directors (together with their close relations and trusts established to hold the interests of such directors or close relations);
- (c) a company with any of its pension funds.

"close relation" means the spouse, child or spouse of a child, grand-child or spouse of a grand-child any parent, brother or, sister, and their spouses;

Reference in the law

Rule 37 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

Public company disclosure obligations

(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| Comments, if any Any person or persons acting in concert with such person who acquire or hold ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition. | |
| Reference in the law Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

Investor is required to inform the company.

Reference in the law

Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

Yes *

*supervisory authority

* market

☐ investors

☐ other

No ☐

Comments, if any (is there any special procedure for providing such information)

Any person or persons acting in concert with such person who acquire or hold ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition.

Reference in the law

Rule 36 of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

The onus of making a disclosure of an acquisition of a particular percentage lies with the individual who purchases.

However in terms of the corporate disclosure policy of the Stock Exchange the company should immediately make an announcement of any significant mergers, acquisitions or change in control.

The company should also immediately announce any purchase of stock or convertible debt security when the total amount exceeds 20% of the entity's net worth based on the balance sheet value.

Reference in the law

Rule 9.1(iv)3,8 and 15 of the Listing Rules of the Colombo Stock Exchange.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

For non compliance of the Listing rules the Stock exchange can transfer the securities of the company to a default board/ publicly reprimand/suspend trading or delist the company.

Reference in the law

Rule 10.1 of the Listing Rules of the Colombo Stock Exchange

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes *

No ☐

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

(1) Where any person -

a) acquires, whether by a series of transactions over a period of time or otherwise, shares which taken together with shares held or acquired by persons acting in concert with such person, carry thirty per centum or more of the voting rights of a company: or

b) together with persons acting in concert with such person, holds not less than thirty per centum and not exceeding fifty per centum of the voting rights of a company and such person or any persons acting in concert with him acquires in any period of twelve months, additional shares carrying more than two per centum of the voting rights,

such person shall extend within thirty-five days, an offer in accordance with this rule to the holders of any class of equity shares which carrying voting rights and in which such person or persons acting in concert with him hold shares.

.

Reference in the law

Rule 31 Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Not applicable

Reference in the law

N/A

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

(2) Offers made under Rule 31 of the Takeovers and Mergers Code shall be conditional only upon the offeror having received acceptances in respect of shares which together with shares acquired or agreed to be acquired before or during the offer will result in the offeror and persons acting in concert with the offeror holding shares carrying more than fifty per centum of the voting rights.

Reference in the law

Rule 31(2) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☐

No *

Comments, if any

Any person incurring a liability to make an offer in terms of the Code shall submit an affidavit with supporting documents to the satisfaction of the commission, of such person's ability to implement such offer in full.

Reference in the law

Rule 31(1)(b)(1) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| Comments, if any The Commission shall have power to direct a person to divest such quantity of shares if the commission is of the opinion that he is unable to implement the offer in full. | |
| Reference in the law Rule 31(1)(a)(2) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003 | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|--|
| <p>(2) If the offeror or any person acting in concert with the offeror, purchases shares in the offeree company during the offer period at a price exceeding the offer price (being the current value of the offer), the offeror shall increase its offer to an amount not less than the highest price paid for such securities so acquired. The offeror shall, immediately after the purchase of such shares, issue a statement to the Stock Exchange that a revised offer shall be made in accordance with this rule and shall state the number of shares purchased and the price paid therefor and the offeror shall simultaneously request the Stock Exchange to make an announcement to that effect on the trading floor.</p> <p>(3) If the offer involves a further issue of already listed shares, the current value of the offer shall be established by reference to the highest trading price of such shares as stated in the daily price list of the Stock Exchange on the day the purchase is effected, or if there are no dealings on such day, then on the most recent day within the past week immediately preceding the day the purchase is effected on which there are dealings.</p> <p>(4) The method by which the current value of the offer price is established under paragraph (3), shall be adopted in calculating the value of such shares for the purpose of ascertaining the minimum increased consideration to be offered in the case of a revised offer.</p> <p>(5) If the offer involves the issue of shares which are not listed, the value of such shares shall be based on a reasonable estimate of what the price would have been had it been listed.</p> <p>(6) If there is a restricted market or inactive trade in the shares of the offeror, or the amount of the shares to be issued is large in relation to the amount already listed, the Commission may require justification of the price used to determine the value of the offer.</p> <p>(7) Shareholders of the offeree company shall be notified in writing of the increased price payable under this rule at least fourteen days before the offer closes.</p> |
| <p>Reference in the law</p> <p>Rule 30 Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003</p> |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>Offers required to be made under rule 31 of the Takeovers and Mergers Code shall, in respect of any class of equity shares involved, be in cash, or where securities are being offered, the offer shall also include a cash alternative, at not less than the highest price paid by the offeror and persons acting in concert with the offeror, for shares of that class within the preceding twelve months. Where any such shares have been acquired for a consideration other than cash, the offeror shall, where the offer involves more than one class of equity shares, obtain the prior approval of the Commission before extending an offer under this rule.</p> | |
| <p>Reference in the law</p> <p>Rule 31(3) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003</p> | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>Offers required to be made under rule 31 of the Takeovers and Mergers Code shall, in respect of any class of equity shares involved, be in cash, or where securities are being offered, the offer shall also include a cash alternative, at not less than the highest price paid by the offeror and persons acting in concert with the offeror, for shares of that class within the preceding twelve months. Where any such shares have been acquired for a consideration other than cash, the offeror shall, where the offer involves more than one class of equity shares, obtain the prior approval of the Commission before extending an offer under this rule.</p> | |
| <p>Reference in the law</p> <p>Rule 31(3) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29th July 2003</p> | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|------|
| Yes <input type="checkbox"/> | No * |
| <p>Comments, if any</p> <p>It is required by law to make the offer at not less than the highest price paid by the offeror and persons acting in concert with the offeror, for shares of that class within the preceding twelve months.</p> <p>If the offeror considers that the highest price referred should not apply in a particular case, the offeror shall consult the Commission which may having regard to the circumstances of such case agree to an adjusted price</p> <p>Further the Commission also has the authority to request any person to divest the shares if it thinks that the offeror is unable to fullfill the offer in full.</p> | |
| <p>Reference in the law</p> <p>Rule 31(3),31(4) and 31(1A)(2) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29thJuly 2003</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|--|------|
| Yes <input type="checkbox"/> | No * |
| <p>Comments, if any</p> <p>The price offered by the offeror should be paid to the persons who accepted.</p> <p>The consideration to which any offeree shareholder is entitled under the offer shall be posted to such shareholders as soon as practicable, and in any case not later than twenty one days after the offer becomes or is declared unconditional in all respects or twenty one days after receipt of valid acceptances where such acceptances were tendered after the offer has become or been declared unconditional in all respects.</p> | |
| <p>Reference in the law</p> <p>Rule 22(5) Of the Takeovers and Mergers Code published in the Gazette Extraordinary No. 875/9 dated 16, June 1995 amended by Gazette No. 1299/6 dated 29thJuly 2003</p> | |

What kind of problems do you face in enforcement of takeovers regulations?

Establishing acting in concert
Indirect takeovers

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes * | No <input type="checkbox"/> |
| <p>If yes, what kind of issues should be presented?</p> <p><i>Acting in concert</i></p> <p>Competing offers</p> <p>Mergers</p> <p>Indirect takeovers</p> | |

Chinese Taipei

| Jurisdiction | Name of authority |
|----------------|-----------------------------------|
| Chinese Taipei | Securities and Futures Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Ministry of Economic Affairs—Business Mergers and Acquisitions Law ☐ Company Law
The Securities and Futures Commission—The Securities and Exchange Law

Any merger /consolidation and acquisition by a company shall be done pursuant to Business Mergers and Acquisitions Law; if not so provided, the Company Law, the Securities and Exchange Law, the Statute for Upgrading Industries, the Fair Trading Law, the Labor Standard Law, the Statute For Investment By Foreign Nationals and other applicable laws and regulations shall govern. If any provisions set forth in Business Mergers and Acquisitions Law involving the business of the authority in charge of the relevant end-enterprise; the Competent Authority of this Law shall process things and matters hereunder jointly with that relevant authority.

What regulations address the problem of takeovers?

- ☒ laws issued by President/Parliament
- ☒ implementing regulations issued by Government/SEC
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law Paragraph 2 of Article 43-1 of the Securities and Exchange Law | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|---|
| <input checked="" type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any |
| Reference in the law <i>Paragraph 2 of the Article 43-1 of the Securities and Exchange Law</i> |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|--|
| 5%, or, 2. The shares purchased by the person taking over are shares of a company of which the person holds more than 50 percent of the issued voting shares. |
| Reference in the law Paragraph 2 of the Article 43-1 of the Securities and Exchange Law |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| _____ <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> exchange <input type="checkbox"/> news agency <input checked="" type="checkbox"/> a company <input checked="" type="checkbox"/> other the Market Observation Post System <input type="checkbox"/> | Deadline right before taking over Deadline right before taking over Deadline _____ Deadline right before taking over Deadline right before taking over |
| Comments, if any | |
| Reference in the law Paragraph 2 of Article 43-1 of the Securities and Exchange Law Article 17 and Article 26 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| <input type="checkbox"/> acquisition <input type="checkbox"/> disposal <input checked="" type="checkbox"/> both |
| Comments, if any |
| Reference in the law Article 9 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company |

What is the sanction in case of failure to disclose shareholding in listed companies?

Being punished with imprisonment for not more than two years, forced labor detention, and/or a fine of not more than NT\$1,800,000.

Reference in the law

Article 175 of the Securities and Exchange Law

Is the supervisory authority entitled to verify investors shareholding in listed companies?

Yes ☐

No ☒

Comments, if any (what would be the procedure for verification of such shareholding)

The person conducting take over has responsibility to make sure all the information disclosure are correct and comply with related regulations. The Competent Authority may, as necessary to protect the public interest, order the offeror to amend the particulars of take over report and carry out reporting and public announcement procedures anew.

Reference in the law

Article 43-5 of the Securities and Exchange Law

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

The conditions for concerning capital groups and market participants acting in concert are:
One with whom the intending acquirer acquires the shares for a common purpose by means such as contract, agreement, or meeting of minds.

A company in which the intending acquirer or his/her spouse serves as chairman or president (general manager).

A company in which the intending acquirer and his/her spouse and relative(s) within the second degree of kinship hold a combined total of more than one-half of the voting shares or comprise the majority of directors.

Affiliated enterprises.

If the intending acquirer is a juristic person, any shareholder holding 20 percent or more therein.

6. A foundation in which the intending acquirer or his/her spouse has donated at least NT\$1 million, which furthermore accounts for one-third or more of the paid-in funds thereof.

Reference in the law

Article 12 of the Securities and Exchange Law

Public company disclosure obligations
(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any Merger or split plans shall be publicly disclosed immediately after being passed by the boards of directors of the companies participating in the merger or split. Article 17 and Article 26 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company. | |
| Reference in the law “Criteria for Handling Acquisition and Disposal of Assets by Public Companies” | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| <p>(1) The content of the publicly disclosed merger or split information shall include at least the following particulars:</p> <p>a. Merger Plans:</p> <p>Shall include the purpose of the merger, the anticipated benefits of the merger, share conversion rates and the basis upon which they were calculated, the scheduled consummation date of the merger, basic information of the participating companies (including company names and main content of business operations), effect of the merger on net value per share and earnings per share, matters related to assumption by the existing company or new company of rights and obligations of the extinguished company (including principles for handling treasury shares and already-issued equity securities), and other important stipulations.</p> <p>b. Split Plans:</p> <p>Shall include the purpose of the split, estimated value of the operations and assets planned to be assigned to the existing company or new company, share conversion rates and the basis upon which they were calculated, the total number and the types and quantities of the shares to be acquired by the split company or its shareholders, matters related to assumption by the existing company or new company of rights and obligations of the split company (including principles for handling treasury shares and already-issued equity securities), matters related to the reduction (if any) in capital of the split company, anticipated benefits of the split, and other important stipulations.</p> <p><input type="checkbox"/>2 <input type="checkbox"/> Investor (the person conduct taking over) is obliged to inform the company.</p> <p>Reference in the law</p> <p>1. “Criteria for Handling Acquisition and Disposal of Assets by Public Companies”</p> <p>2. Article 14 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company</p> |
|---|

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> market <input type="checkbox"/> investors <input type="checkbox"/> other | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) Any person (including any company) who acquires, either individually or jointly with other persons, more than ten percent of the total issued shares of a public company shall file a statement with the Competent Authority and post the information on Market Observation Post System within ten days after such acquisition, stating the purpose and the sources of funds for the purchase of shares and any other matters required to be disclosed by the Competent Authority; such persons shall file timely amendment when there are changes in the matters reported. 2. Moreover, if Any person acquires shares of a public company by taking over, the person shall report to the SFC and publicly announce related information within two (2) days from the tender offer period's expiration. 3. A public company acquiring or disposing of the same securities reaches 20% of its paid-in capital or NT\$300,000,000 or more shall place a public announcement.(including the activities of mergers,acquisitions or split-ups of public companies.) | |
| Reference in the law 1. Paragraph1 of Article 43-1 of the Securities and Exchange Law 2. Article 22 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company. 3. “Criteria for Handling Acquisition and Disposal of Assets by Public Companies” | |

When is a public company obliged to inform about the investor’s acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| Acquired shares of a public company by taking over <input type="checkbox"/> within two (2) days. Merger or split plans shall be publicly disclosed immediately after being passed by the boards of directors of the companies participating in the merger or split. |
| Reference in the law Article 22 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company 2. “Criteria for Handling Acquisition and Disposal of Assets by Public Companies” |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

A fine of more than NT\$120,000 and less than NT\$600,000.

Reference in the law

Securities and Exchange Law-Subparagraph 3 of Paragraph 1 of Article 178

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes ☒

No ☐

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

Any public tender offer to purchase exceed five percent of the total number of voting shares issued by the public company bypassing the centralized securities exchange market or the over-the-counter market may be conducted only after it has been reported to the SFC and publicly announced.

Reference in the law

Subparagraph 1 of Paragraph 2 of Article 43-1 of the Securities and Exchange Law

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The company is not obliged to announce a tender offer after exceeding a certain threshold of shares when shares purchased by the company through the public tender offer are shares of other company of which the company holds more than 50 percent of issued voting shares.

Reference in the law

Subparagraph 2 of Paragraph 2 of Article 43-1 of the Securities and Exchange Law

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

1. Investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are asked to reduce when more investors subscribe.
2. If the shares number to be sold has exceeded the projected shares number to be acquired, the investor shall purchase the shares pro rata from all share holders, and shall return those shares which have been deposited but the transaction of which not yet consummated to share holders.

Reference in the law
Article 23 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☐

No ☒

Comments, if any

There is no collateral for a tender offer requiring, but the investor has to submit the source of funds and supporting documents to the SFC.

Reference in the law

Subparagraph 4 of Paragraph 1 of Article 9 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

Yes ☐

No ☒

Comments, if any

After a public tender offeror has initiated a public tender offer, it may not suspend the public tender offer except in any of the following circumstances, where the Competent Authority has granted approval:

The public company whose securities are being purchased encounters major changes in its financial or business condition and the offeror has presented evidence of the changes.

The Offeror becomes bankrupt, dies, is judicially interdicted, or is required by a court ruling to undergo reorganization.

Other circumstances specified by the Competent Authority.

A fine of not less than NT\$120,000 and not more than NT\$600,000

Reference in the law

Paragraph 1 of Article 43-5 and Article 178 of the Securities and Exchange Law

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

Before making any modifications to conditions, the Offeror shall file a report with the SFC and make a public announcement, and each Offeree, appointed institution and the public company whose securities are being acquired shall be notified.

Reference in the law

Article 17 of the Regulations Governing Tender Offers for Purchase of the Securities of a Public Company

How is the price in a tender offer established?

Does it have to be equal for all investors?

Yes ☒

No ☐

Comments, if any

A public tender offeror shall adopt uniform purchase conditions in the public tender offer.

Reference in the law

Paragraph 1 of Article 43-2 of the Securities and Exchange Law

Is there a minimum price?

Yes ☐

No ☒

If yes, how it is defined *(e.g. an average market price for a given period before the announcement)*?

Reference in the law

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

Yes ☒

No ☐

Comments, if any

Reference in the law

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any The price can not be paid immediately after the take over differ from the price offered in the take over process. | |
| Reference in the law Paragraph 1 of Article 43-2 of the Securities and Exchange Law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|-----------------------------|
| Identifying capital groups. |
|-----------------------------|

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? Identifying capital groups. | |

Thailand

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| Thailand | Securities and Exchange Commission |

Which authority is responsible for takeovers in your jurisdiction?

The Securities and Exchange Commission is responsible for business takeovers in Thailand.

What regulations address the problem of takeovers?

- ☒ laws issued by President/Parliament
- ☒ implementing regulations issued by Government/SEC
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>Listed company : Investor who acquires listed securities of a public company and thereby increases the number of the securities held to a number, which aggregately reaches any multiple of 5% of the total number of securities. Such investor has duty to report to the Securities and Exchange Commission (SEC) and the Stock Exchange of Thailand (SET) within the next business day after the date of such acquisition.</p> <p>Non listed company : Investor is required to report only to the SEC.</p> | |
| <p>Reference in the law</p> <p>1) Securities and Exchange Act B.E. 2535 (1992)– Section 246</p> <p>2) <i>Notification of the Securities and Exchange Commission No. GorJor. 58/2545</i></p> <p><i>Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities</i></p> <p>In a Business.</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| <input checked="" type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any |
| Reference in the law 1) Securities and Exchange Act B.E. 2535 (1992)–Section 246 2) <i>Notification of the Securities and Exchange Commission No. GorJor. 58/2545</i> <i>Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities in a Business.</i> |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| The disclosure threshold is the acquisition/disposition to a number which aggregatedly reaches any multiple of 5% of the total number of securities. |
| The above obligation applies to the acquisition of convertible securities as well. (For the calculation of shares acquisition, we will assume in case of rights are exercised) |
| Reference in the law 1) <i>Securities and Exchange Act B.E. 2535 (1992)–Section 246</i> 2) <i>Notification of the Securities and Exchange Commission No. GorJor. 58/2545</i> <i>Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities in a Business.</i> |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> exchange <input type="checkbox"/> news agency <input type="checkbox"/> a company <input type="checkbox"/> other | Deadline the next business day Deadline the next business day Deadline _____ Deadline _____ Deadline _____ |
| Comments, if any Listed company is required to report the SEC and the SET. Non listed company is required to report only to the SEC. | |
| Reference in the law <i>Notification of the Securities and Exchange Commission No. GorJor. 58/2545</i> <i>Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities in a Business.</i> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| <input type="checkbox"/> acquisition <input type="checkbox"/> disposal <input checked="" type="checkbox"/> both |
| Comments, if any |
| Reference in the law 1) Securities and Exchange Act B.E. 2535 (1992)–Section 246 2) <i>Notification of the Securities and Exchange Commission No. GorJor. 58/2545</i> Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities in a Business. |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|--|
| A criminal sanction which is liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues or both. (approximately 1US\$ = 40 baht) |
| <i>Reference in the law</i> Securities and Exchange Act B.E. 2535 (1992)–Section 298 |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) Through the submitted report, or verification of shareholder registration | |
| Reference in the law <i>The Securities and Exchange Act B.E. 2535 (1992) – Sections 246 and 264</i> | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| Regulations on business takeover does not expressly specify any provision relating to acting in concert. Nonetheless, capital groups or market participants, if jointly acquire in their own capacity or acquire as agent of the other, securities issued by company listed on the SET could be deemed as concert parties for the purpose of imposing duty of making tender offer to existing shareholders of such listed company. |
| Reference in the law 1) The Civil and Commercial code, section 797, 820 2) The Panel code, section 83 3) The Securities and Exchange Act B.E. 2535 (1992)– Sections 247 and 298 |

Public company disclosure obligations
(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any Neither the SEC nor the SET regulation requires the investor to inform to the given public company. | |
| Reference in the law - | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| Listed public company : data on acquisition/ disposition is publicly available in the SEC and the SET website Non listed public company : data on acquisition/ disposition is publicly available in the SEC website |
| Reference in the law Notification of the Securities and Exchange Commission No. GorJor. 58/2545 Re: Rules and Procedures for a report of the Acquisition or Disposition of Securities in a Business. |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|----|
| Yes <input type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> market (only listed company) <input type="checkbox"/> investors <input type="checkbox"/> other | No |
| Comments, if any (is there any special procedure for providing such information) Listed company : In case of any change in the shareholding structure of major shareholder of the listed company or its parent company which results in changes in management control of the listed company. Non listed company is not required by the SEC. | |
| Reference in the law Regulation of the Stock Exchange of Thailand Bor.Jor./Por.11-00 Re: Rules, Conditions and Procedures Governing the Disclosure of Information or Any Act of A Listed Company – clause 3(7), clause 4. | |

4. When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

Comments, if any (is there any special procedure for providing such information)
It must report to the SET without delay when such event occurred at least 1 hour before each round of securities trade or after the close of securities trading at the SET.

Reference in the law

Regulations of the Stock Exchange of Thailand Bor.Jor./Por.11-00 Re: Rules, Conditions and Procedures Governing the Disclosure of Information or Any Act of A Listed Company – clause 3(7), clause 4.

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

If it fails to report to the SET in case of any change in the shareholding structure of major shareholder of the listed company or its parent company which results in changes in management control of the listed company and this information affects or may affect to investment decision making or change the price of listed securities of listed company, the SET will post the H (Trading Halt) or the SP (Suspension) sign until the information is thoroughly disclosed to the public.

Reference in the law

Regulations of the Stock Exchange of Thailand Bor.Jor./Or.02-00 Re: Rules, Conditions and Procedures of the Temporary Suspension the Trading of Listed Securities.

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
|---|-----------------------------|

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?
(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investors, or to the fact that the investor holds specified number of shares/votes).

The investor who is required to announce a tender offer is as follows:

1. Any investor who has purchased or taken any action which results in his holding of shares to reach or exceed 25% 50% or 75% of voting right of listed company.

Any investor who reach or exceed the trigger point as mention in (1) as the listed company has repurchased its own shares and he acquires any additional number of share in the listed company.

Any investor who has acquired control in the intermediate entity which causes the aggregate holding by him and intermediate entity in listed company reach or exceed the trigger point.(Chain Principle)

Reference in the law

Securities Exchange Commission Act – Section 247

Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 6, 7, and 8

2..Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

Listed company is not obligated to announce a tender offer after exceeding a certain threshold of shares when the company repurchases its share.

Reference in the law

1) *Securities Exchange Commission Act – Section 247*

2) Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause

.....

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Partial tender offer is allowed for any investor who would like to make a voluntary tender offer. Moreover, the aggregate number of share in listed company specified in the announcement of partial tender offer and his existing stake shall be less than 50% of voting right and the offer shall not be less than 10%.

Reference in the law

Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 52,

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any <i>Investor who announces the tender offer is required to specify source of fund for making a tender offer. Moreover, financial advisor who is a preparer of tender offer is required to review the financial evidence to make sure that the investor can fulfill the obligation under the tender offer.</i> | |
| Reference in the law Notification of the Office of the SEC No. SorJor/ 6/2003 regarding Format of Business Takeover (only available in Thai) | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any Investor who withdraws the announced tender offer will be prohibited from making a tender offer for the period of one year. If the investor fails to comply with the procedure of withdrawal of the announced tender offer, the investor will be prohibited from making a tender offer for the period of two years. In case the investor submits the tender offer document, the investor is not allowed to withdraw the tender offer except there is the following matters An occurrence of any event which causes serious damage to the asset of the listed company. The taking any action by the listed company which result in the significant decrease in the share value. | |
| Reference in the law Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 16 , 17 and 46 | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

The condition for changing the takeover bid is as follows:

Investor who announces tender offer, but has not announced his final offer and the offer term to amend appear more favorable.

There is an event having a material adverse effect on the business.

There is a competing bid.

Reference in the law

Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 27

How is the price in a tender offer established?

Does it have to be equal for all investors?

Yes ☒

No ☐

Comments, if any

-

Reference in the law

Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 36

Is there a minimum price?

Yes ☒

No ☐

| |
|---|
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>The offer price in tender offer :</p> <p>In general case, the offer price must not be less than the highest price paid for securities which has been acquired by investor or related party of investor during period of 90 days prior to the date of submitted tender offer document.</p> <p>Offer price for chain principle must not be less than the maximum price calculated in accordance with the following methods:</p> <p>the acquisition cost of a controlling interest over the listed company</p> <p>the highest price paid for securities which has been acquired by investor or related party of investor during period of 90 days prior to the date of submitted tender offer document</p> <p>Tender offer for delisting listed company must not be less than the maximum price calculated in accordance with the following methods :</p> <p>The highest price paid for securities which has been acquired by investor or related party of investor during period of 90 days prior to the date of submitted tender offer document.</p> <p>Weighted average price of 5 business days prior to the date on which the board of director of listed company has resolution to delist the company or the date of which shareholder's meeting resolves to delist the company</p> <p>NAV</p> <p>Fair value as appraised by financial advisor</p> |
| <p>Reference in the law</p> <p>Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 37, 38 and 58</p> |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|------|
| Yes | No X |
| <p>Comments, if any</p> <p>The offer price must not be less than the highest price paid for securities which has been acquired by investor or related party of investor during period of 90 days prior to the date of submitted tender offer document unless takeover panel grant a waiver to the offeror.</p> | |
| <p>Reference in the law</p> <p>Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 45</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any The price paid during 6 months after the tender offer must not be higher than the price specified in the offer document. | |
| Reference in the law Notification of the Securities Exchange Commission No. Gor Jor 53/2545 – Clause 49 | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|--|
| Acting in concert issues. Identified the ultimate shareholder of the offeror issues. |
|--|

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? Acting in concert issues. | |

Turkey

| Jurisdiction | Name of authority |
|--------------|-----------------------------------|
| Turkey | Capital Markets Board (the Board) |

Which authority is responsible for takeovers in your jurisdiction?

The Board is the responsible authority for takeovers where a publicly held company is involved in the transaction.

What regulations address the problem of takeovers?

- ☐ laws issued by President/Parliament
- ☒ implementing regulations issued by Government/SEC (the Board)
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>When a natural or legal person or natural or legal persons acting together with this natural or legal person acquire, directly or indirectly, 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 or 75% or more of the total voting rights or of the capital of the corporation; or when the portion held by those persons falls below these thresholds, this event should be publicly disclosed.</p> | |
| <p>Reference in the law</p> <p>Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 5/a-2)</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|---|
| <input type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 5/a-2) |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|---|
| 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 or 75% or more of the total voting rights or capital of the corporation. |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 5/a-2) |

Whom the investor is obliged to inform and when?

| | |
|---|---|
| <input type="checkbox"/> supervisory authority <input type="checkbox"/> exchange news agency <input checked="" type="checkbox"/> company <input type="checkbox"/> other | Deadline is the next working day following the date when such situation arises or the investor has become aware of the situation Deadline is the next working day until 9.00 a.m. following the date when such situation arises or the investor has become aware of the situation Deadline _____ Deadline is the same as described above Deadline _____ |
|---|---|

| |
|---|
| <p>Comments, if any</p> <p>-For corporations whose securities are traded on the exchange, the Istanbul Stock Exchange (ISE) should be notified,</p> <p>-For corporations whose securities are not traded on an exchange, the Board should be notified</p> <p>As soon as these situations arise or are heard by the investor.</p> <p>Investor is also obliged to notify the company on the same day.</p> |
| <p>Reference in the law</p> <p>Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 12,13,14)</p> |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| <p><input type="checkbox"/> acquisition</p> <p><input type="checkbox"/> disposal</p> <p><input checked="" type="checkbox"/> both</p> |
| <p>Comments, if any</p> |
| <p>Reference in the law</p> <p>Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 5/a-2)</p> |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| <p>Penal Liability: Natural persons and the authorized representatives of legal entities and those acting together with them who do not disclose the information which he/she should disclose shall be punished with a prison sentence of from two to five years and a heavy pecuniary fine of from 10 billion TL up to 25 billion TL. (Capital Market Law (the Law)- Article 47-A/3)</p> <p>Those who act in violation of Article 16/A regarding Disclosure of Material Events shall be punished with a heavy pecuniary fine from 5 billion TL up to 15 billion TL.(the Law- Article 47-C)</p> <p>Administrative Pecuniary Punishments: Natural persons and legal entities who have acted in violation of the regulations, standards and forms or general and special decisions made by the Board based on the Law, a pecuniary fine between 9.700.000.000 TL and 48.500.000.000 TL shall be imposed by the Board stating the justification. (the Law- Article 47/A)</p> |
| <p>Reference in the law</p> <p>Capital Market Law- Article 47-A/3, Article 47-C and Article 47/A</p> |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| Reference in the law | |

What are your regulations concerning capital groups and market participants acting in concert
(*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|--|
| There is no particular definition about capital groups and market participants acting in concert. However, there is an ongoing work regarding the amendment to the “Communiqué on tender offers” that will include, among other things, a definition of acting in a concert. |
| Reference in the law |

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Article14) | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|--|
| Investor also notifies the company. |
| ISE’s daily bulletin about disclosures and weekly bulletin of the Board are other sources of knowledge regarding acquisition/disposal of the shares. |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Article14) |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|----|
| Yes <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> market <input type="checkbox"/> investors <input type="checkbox"/> other | No |
| Comments, if any (is there any special procedure for providing such information) A public company is obliged to disclose any change in shareholdings that causes a direct or indirect change in the control of the company. | |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Article 5/a-1) | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
 (e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

| |
|--|
| When the acquisition results a direct or indirect change in the control of the company. For the companies whose securities are not traded on any exchange, the disclosure should be made to the Board at the next working day following the date the event occurred or the date the company has become aware of the event. For the companies whose shares are traded on an exchange, the disclosure should be made to the relevant exchange at the next working day 9.00 a.m. following the date the event occurred or the date the company has become aware of the event. |
| Reference in the law Communiqué on Principles Regarding Public Disclosure of Material Events-(Articles 5/a-1, 12 and 13) |

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Penal Liability: Natural persons and the authorized representatives of legal entities and those acting together with them who do not disclose the information which he/she should disclose shall be punished with a prison sentence of from two to five years and a heavy pecuniary fine of from 10 billion TL up to 25 billion TL. (The Law- Article 47-A/3)

Those who act in violation of the Article 16/A regarding Disclosure of Material Events shall be punished with a heavy pecuniary fine from 5 billion TL up to 15 billion TL. (the Law- Article 47-C)

Administrative Pecuniary Punishments: Natural persons and legal entities who are determined to have acted in violation of the regulations, standards and forms or general and special decisions made by the Board based on the Law a pecuniary punishment between 9.700.000.000 TL and 48.500.000.000 TL shall be imposed by the Board stating the justification. (the Law Article 47/A)

Reference in the law

Capital Market Law- Article 47-A/3, Article 47-C and Article 47/A

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>Individuals who own, by tender offer, block or individual purchases or any other method, 25% or more of the capital and the voting rights of a corporation directly or indirectly, or regardless of this percentage individuals owning shares controlling the management of the corporation alone or together with the cooperative parties, are obliged to make a tender offer to the other shareholders. If the individuals owning 25% to 50% of the capital and voting rights of a corporation alone or with the cooperative parties, increase this percentage by 10% or more within any twelve-month period, they are also obliged to make a tender offer. Within fifteen days following the above mentioned percentages are reached, it is necessary to apply to the Board for tender offer.</p> <p>Circumstances for mandatory tender offer are listed below:</p> <ol style="list-style-type: none"> 1. Those acquire 25% or more of the total voting rights or total number of the shares or acquiring the company control with no combination to this rate personally or by acting together with the legal entities directly or indirectly 2. Those controlling the voting rights or the capital between the rates of 25% and 50% personally or by acting with the legal entities and make an increase by 10% or more in any 12 month period. | |
| Reference in the law | |
| Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 17) | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The Board may impose exemptions for the mandatory tender offer in accordance with this Article under the following situations:

If the acquisition of shares and voting rights of the corporation is based on the condition that the change in capital or management structure is necessary for the strengthening of the financial structure of the corporation. The Board may ask for a report of an independent organization proving the existence of such a condition or may have the examinations done by the experts of the Board.

If the acquisition of shares and voting rights of the corporation is approved at the Shareholders' Meeting of the corporation by the quorum mentioned in the first sentence of paragraph two in Article 388 of Turkish Commercial Code (2/3).

If, despite the acquisition of shares and voting rights of the corporation, no change occurs in the control of management due to the capital distribution of the corporation. In this case, upon the application of related parties, the capital structure of the corporation shall be examined by the Board, and if acquisitions are decided to have no impact on control of management, the Board may decide on the exemption from mandatory tender offer.

If the shares and voting rights of the corporation have been subject to acquisition due to legal obligations or in case the ratios are exceeded unintentionally, if commitment is made to sell the portion relevant for mandatory tender offer within the minimum period determined by the Board.

If the corporation is going through a privatization process, the Board may decide on the exemption from mandatory tender offer for the sales of state owned shares.

Reference in the law

Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 17)

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Investors are required to announce tender offer for all the remaining shares.

Reference in the law

Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 17)

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any %25 of the value of the shares to be acquired should be deposited at the bank or brokerage house. | |
| Reference in the law Currently, abovementioned requirement is followed in practice but does not exist in the law, however there is an ongoing work regarding the amendment of the Communiqué on tender offers that will include the requirement regarding the deposit of the amount necessary to acquire shares in the offer. | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any Individuals attempting tender offer may decide no to buy the shares until the beginning date of the buying period. This should be announced to the public in accordance with the procedure defined in the related Communiqué. | |
| Reference in the law Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 16) | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| | |
|--|--|
| There is no provision related with this issue. | |
| Reference in the law | |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any The tender offer price should be same for the same class of shares | |
| Reference in the law Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 17) | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? If there is a mandatory tender-offer, the bid price proposed to shareholders shall not be below -the highest price paid to the targeted shares, if the acquisition of the shares is made through tender offer, -if the acquisition of the shares is made by a block purchase, the highest price paid at the block purchase, - If these purchases are realized by other methods, the highest price paid for the shares of the corporation three months prior to the purchase by the purchasing individual or cooperating individuals. The proposed price shall be for cash and the offers must be announced for at least 15 days. | |
| Reference in the law Communiqué On Principles Regarding Proxy Voting At Shareholders' Meetings Of Publicly Held Joint Stock Corporations, Proxy Solicitation And Tender Offer- (Article 17) | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any The price shall not be lower than the highest price paid for the shares of the corporation three months prior to the purchase. | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

- Obligation to announce a tender offer when investor indirectly (indirect ownership of the shares of a given company) exceeds a certain threshold of votes/shares of a given company
- Establishment of price in a tender offer.
- Lowest fine penalties for enforcement of tender offer

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? | |
| <ul style="list-style-type: none"> -Acting in a concert. -Establishment of price. -Sanctions in case of failure to make tender offer -Indirect ownership | |

Uruguay

| Jurisdiction | Name of authority |
|--------------|---------------------------|
| Uruguay | Banco Central del Uruguay |

Which authority is responsible for takeovers in your jurisdiction?

No authority is responsible for takeovers in Uruguay. Recently, consultants have a proposal for bill of law that will give Banco Central del Uruguay this responsibility. It is not likely that this law will be approved before 2005.

What regulations address the problem of takeovers?

NOT APPLICABLE

- ☐ laws issued by President/Parliament
- ☐ implementing regulations issued by Government/SEC
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?
(e.g. to inform market about changes of the structure of share ownership)

| | |
|----------------------|------|
| Yes | No X |
| Comments,if any | |
| Reference in the law | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. *in case of preferred shares the number of shares differs from number of votes*)

| |
|---|
| <input type="checkbox"/> shares <input type="checkbox"/> votes NOT APPLICABLE |
| Comments, if any |
| Reference in the law |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|----------------------|
| NOT APPLICABLE |
| Reference in the law |

Whom the investor is obliged to inform and when?

| | |
|---|--|
| NOT APPLICABLE <input type="checkbox"/> supervisory authority <input type="checkbox"/> exchange news agency a company <input type="checkbox"/> other | Deadline _____ Deadline _____ Deadline _____ Deadline _____ Deadline _____ |
| Comments, if any | |
| Reference in the law | |

Are the requirements related to acquisition or to disposal of shares?

| |
|--|
| <input type="checkbox"/> acquisition <input type="checkbox"/> disposal NOT APPLICABLE <input type="checkbox"/> both |
| Comments, if any |
| Reference in the law |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|----------------------|
| NOT APPLICABLE |
| Reference in the law |

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| Reference in the law | |

What are your regulations concerning capital groups and market participants acting in concert
(*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|----------------------|
| NOT APPLICABLE |
| Reference in the law |

Public company disclosure obligations
(*disclosure of shareholders of publicly traded companies*)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

The sources of knowledge could be several. For example:
Announcement in a newspaper.
During the General or Extraordinary Meeting of Shareholders
Meetings held between the management and the acquirer.

Reference in the law

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|---|----|
| <p>Yes</p> <p><input checked="" type="checkbox"/> supervisory authority</p> <p><input checked="" type="checkbox"/> market</p> <p><input type="checkbox"/> investors</p> <p><input type="checkbox"/> other</p> | No |
| <p>Comments, if any (is there any special procedure for providing such information)</p> <p>Only if there are changes in the controlling interest</p> | |
| <p>Reference in the law</p> <p>Law of capital market No. 16.749 – Article 5°; Act of Banco Central del Uruguay: Circular 1615</p> | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

If this acquisition means changes in controlling interest the company must inform immediately, as this is considered relevant information.

Reference in the law

Law of capital market No. 16.749 – Article 5°; Act of Banco Central del Uruguay: Circular 1615

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

If a company fails to disclose relevant information, the worst penalty that could receive is the loss of the status of listed company.

Reference in the law

Law of capital market No. 16.749 – Article 25°

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

Yes ☐ NOT APPLICABLE

No NOT APPLICABLE

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?
(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

Reference in the law

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

NOT APPLICABLE

Reference in the law

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|----------------------|
| NOT APPLICABLE |
| Reference in the law |
| |

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|----------------------|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| Comments, if any | |
| Reference in the law | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|----------------------|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| Comments, if any | |
| Reference in the law | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|----------------------|
| NOT APPLICABLE |
| Reference in the law |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|----------------------|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| Comments, if any | |
| Reference in the law | |

Is there a minimum price?

| | |
|--|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| If yes, how it is defined <i>(e.g. an average market price for a given period before the announcement)</i> ? | |
| Reference in the law | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period *(e.g. over the last 12 months)*?

| | |
|----------------------|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| Comments, if any | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (e.g. can the price paid immediately after the take over differ from the price offered in the take over process)

| | |
|----------------------|-------------------|
| Yes NOT APPLICABLE | No NOT APPLICABLE |
| Comments, if any | |
| Reference in the law | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|----------------|
| NOT APPLICABLE |
|----------------|

Do you think a seminar on takeovers should be organized?

| | |
|---|-----------------------------|
| Yes X | No <input type="checkbox"/> |
| <p>If yes, what kind of issues should be presented?</p> <p>The advantages of regulation on takeovers.</p> | |

Venezuela

| Jurisdiction | Name of authority |
|--------------|------------------------------------|
| Venezuela | Comisión Nacional de Valores (CNV) |

Which authority is responsible for takeovers in your jurisdiction?

Comisión Nacional de Valores (CNV)

What regulations address the problem of takeovers?

☒ laws issued by President/Parliament : Ley de Mercado de Capitales (LMC)
☒ implementing regulations issued by Government/CNV : Normas sobre Ofertas Públicas de Adquisición, de Intercambio y Toma de Control de Sociedades que hacen oferta pública de acciones y otros derechos sobre las mismas (Normas sobre OPA)
self-regulation issued by the market
articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>Any investor called “Initiator”, pretending to acquire shares or securities which entitle to a vote right, that allow to acquire, complete or increase a <u>Significant Share Ownership</u>, or to acquire, consolidate or increase a <u>Political Majority Control</u> , through one act or several consecutive acts, is compeled to notify the Comisiòn Nacional de Valores, and submit a Report before the offer goes public, so the CNV can determine the publicity means and the terms of the Tender Offer. The Report should include a summary, the initiator’s general and financial information, the offer purpose, the initiator’s share ownership, the initiator’s relations with the company, and the offer’s special conditions.</p> <p><u>Significant Share Ownership</u>: A share ownership represented directly or indirectly through ownership, vote rights, business agreements, usufruct rights or any kind of agreement, which allow the initiator to obtain the control or increase his stock ownership in more than 10% of a publicly traded company’s capital . In order to determine the <u>Significant Share Ownership</u>, there will be considered the shares issued and the ones not issued, that are subject of options, rights or conversion privileges or purchase options in favor of the Initiator.</p> <p><u>Political Majority Control</u>: More than 50% of share ownership or any lesser percentage of shares, vote rights, or securities that according to Comisiòn Nacional de Valores, grant or may grant, directly or indirectly, the initiator, the Shareholders Meeting’s decision control. In order to determine the <u>Political Majority Control</u>, there will be considered the outstanding shares and the ones not issued, that are subject of options, rights or conversion privileges or purchase options in favor of the Initiator.</p> | |
| <p>Reference in the law</p> <p>Arts. 109-111, 122 LMC</p> <p>Arts. 4, 6 Normas sobre OPA</p> | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?
(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|--|
| <input checked="" type="checkbox"/> shares <input checked="" type="checkbox"/> votes |
| <p>Comments, if any</p> <p>The law refers indistinctly to shares, vote rights or any kind of agreement (private agreements regarding voting rights: sale, transfer, usufruct, etc.) that can produce the following results: acquiring a i) <u>Significant Share Ownership</u> of a corporation using money or exchanging shares/rights or ii) reaching the <u>Political Majority Control</u> of a corporation.</p> |
| <p>Reference in the law</p> <p>Art. 3 Normas sobre OPA</p> |

What are disclosure thresholds?
(e.g. 5%, 10%)

| |
|---|
| <p>10% of the company's capital in the case of acquisition of Significant Share Ownership. Any acquisition percentage that allows reaching the Political Majority Control of a company (It depends on the target corporation bylaws). In the case of a company's control group that intends to increase its share ownership, it has to extend the tender offer to at least the 75% of the company's capital (if the group owns less than such percentage). If the control group owns more than 75% of the company's capital and wants to increase its share ownership, it has to extend the tender offer to the 100% of the company's shares.</p> |
| <p>Reference in the law <i>Art. 3 Normas sobre OPA</i></p> |

Whom the investor is obliged to inform and when?

| | |
|--|---|
| <p><input checked="" type="checkbox"/> supervisory authority exchange news agency a company other</p> | <p>Deadline: 5 working days prior to the start-up of the acquisition public offering, the exchange public offering or the take over public offering. Deadline _____ Deadline _____ Deadline _____ Deadline _____</p> |
| <p>Comments, if any The Initiator has to submit a Report to the CNV before the offer goes public, so the CNV can define the publicity means and the terms of the Tender Offer.</p> | |
| <p>Reference in the law: <i>Art. 6 Normas sobre OPA</i></p> | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| <p>acquisition disposal <input checked="" type="checkbox"/> both</p> |
| <p>Comments, if any</p> |
| <p>Reference in the law: <i>Art. 3, Parágrafo Tercero Normas sobre OPA</i></p> |

What is the sanction in case of failure to disclose shareholding in listed companies?

The publicly traded companies are not obliged to submit to CNV the shareholders list , therefore the law does not consider any sanction. The CNV can ask any company to submit this information.

Reference in the law

Is the supervisory authority entitled to verify investors shareholding in listed companies?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
|---|-----------------------------|

Comments, if any (what would be the procedure for verification of such shareholding)

The CNV can require the company to submit the shareholders list in order to verify the shareholding.

Reference in the law:

Art. 9 LMC

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

The minority stockholders representing at least the 20% of the capital of a publicly traded company, have the right to appoint a proportional number of members of the Board of Directors. In order to exercise this right, the group must sign an agreement (public or private document) prior to the celebration of the General Shareholders Meeting and it has to be submitted to the CNV and to the company.

Requirements for the constitution of the minority group: Any shareholder has the right to form the club except for:

Any shareholder holding the Political Majority Control of the company

Any shareholder included in the Political Majority Control group of the company (related to)

The shareholder who had bought his shares within less than 90 days prior to the GSM

The shareholder who will resale or transfer his shares in less than 90 days prior to the GSM

The shareholder who has transferred his vote right.

Reference in the law

-Art. 125 LMC

-Normas sobre Procesos de nombramiento de integrantes de la Junta Directiva por Accionistas Minoritarios (issued by CNV)

Public company disclosure obligations*(disclosure of shareholders of publicly traded companies)*

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any Through the Report that submits the Initiator to the CNV and then approved by it, that is published in newspapers and informed also by the Stock Exchange Market. | |
| Reference in the law Art. 6 Normas sobre OPA | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|---|
| Through the Stock Exchange Market (Bolsa de Valores de Caracas) |
| Reference in the law |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|--|
| Yes supervisory authority market investors other | No <input checked="" type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) The Initiator is obliged to inform the CNV about his intention of acquire shares (significant share ownership) or to reach the Political Majority Control. In the case of disposal of a company's shares, the shareholder who wants to sell his shares is the one obliged to inform the CNV (if the shares correspond to a significant share ownership or gives a Political Majority Control of the company). The managers of a publicly traded company are also obliged to inform the CNV within 2 days after the operation, the purchase or disposal of shares provided that the amount of shares is equivalent or exceeds the 10% of the company's capital. | |
| Reference in the law: Art. 110, 122 LMC Art. 3 Normas sobre OPA | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?
(e.g. *what is the deadline of informing supervisory body and/or the market about acquisition?*)

The person obliged to inform the supervisory authority is the Initiator or the company (and related companies) that intends to acquire a significant share ownership or to obtain the political majority control of a company. The Initiator may not be a public company and therefore not under the supervision and control of the CNV.
Such a notification must be done 5 working days prior to the publication of the offer or if the investor has already -directly or indirectly- purchased more than 10% of the company's capital, within 2 days after the operation.
The managers of a public company are also obliged to inform the supervisory authority if occurs the disposal or purchase of an amount of shares that exceeds the 10% of the company's capital (Within 2 days after the operation).

Reference in the law:

Art. 110, 122 LMC

Art. 6 Normas sobre OPA

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

In the case of failure to disclose information to CNV, the acquiring investor will not be able to exercise the rights related to the shares acquired against the law (political and economics) and all the agreements done with those shares will be null and void.

Reference in the law:

Art. 110 LMC

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, 50% of the total number of votes/shares at the GMS)?

| | |
|--|----|
| Yes X | No |
| <p>If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares? <i>(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).</i></p> <p>10% of the company's capital in the case of acquisition of Significant Share Ownership. Any acquisition percentage that allows reaching the Political Majority Control of a company (It depends on the target corporation bylaws). In the case of a company's control group that intends to increase its share ownership, it has to extend the tender offer to at least the 75% of the company's capital (if the group owns less than such percentage). If the control group owns more than 75% of the company's capital and wants to increase its share ownership, it has to extend the tender offer to the 100% of the company's shares.</p> | |
| Reference in the law | |

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

| |
|---|
| <p>A company is not obliged to inform the CNV solely in those cases when the amount of shares doesn't reach the 10% of the company's capital; or when the acquisition does not allow the Initiator to reach the political majority control.</p> |
| <p>Reference in the law <i>Art. 3 Normas sobre OPA</i></p> |

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

| |
|---|
| <p>Investors who intend to announce a tender offer must indicate in the Report the number or percentage of shares they intend to purchase and the prorated rules, in case they receive acceptances in excess of the number they offer to buy, following the criteria established by the CNV (Normas sobre OPA).</p> |
|---|

| |
|--|
| Reference in the law <i>Art. 7 Normas sobre OPA</i> |
|--|

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law <i>Art. 7 Normas sobre OPA</i> | |

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any There are no sanctions if the investor withdraws the offer. The withdrawal is permitted fulfilling these requirements: Up to the first day of the offer: the offer is revocable anytime, through the publication of a Public Statement duly justified, submitted to the CNV and the Stock Exchange Market From day 1 st to 3 rd day before the closing of the offer: through a Statement submitted to the CNV and it will be admitted under certain conditions. Up to the operation's settlement: if there is a decision from the Antitrust authority against the operation. | |
| Reference in the law: <i>Art. 16 Normas sobre OPA</i> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|---|
| In case of changes to the offer (included in the Report submitted to the CNV), has to be equally submitted to the CNV to be approved and disclosed to the public. |
| Reference in the law: <i>Art 9 Normas sobre OPA</i> |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)? The minimum price is the average market price for the 6 months period before the date the Report is submitted to the CNV | |
| Reference in the law: Art 7 Normas sobre OPA | |

Can the offered price be lower than the maximum price paid by an offeror in a preceding period (*e.g. over the last 12 months*)?

| | |
|--|-----------------------------|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any See previous answer. | |
| Reference in the law | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|---|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any: The Initiator must include in the Report to be submitted to the CNV a statement addressed to any person who have sold shares equivalent to more than 2% of the company's capital, within 6 months before the offer's initial date, to pay the difference between the price the stockholder sold his shares and the price offered by the Initiator, in case the latter is higher. | |
| Reference in the law: Art. 7 Normas sobre OPA | |

What kind of problems do you face in enforcement of takeovers regulations?

| |
|---|
| Among other things that can affect enforcement of takeover, are: The amount of information the CNV can ask the Initiator, especially financial, in order to keep fully informed the market. The use of corporations "ad hoc" as vehicles to submit the offer. The protection of the minority shareholders. |
|---|

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, what kind of issues should be presented? Enforcement New trends.Comparison between different jurisdictions | |

Vietnam

| Jurisdiction | Name of authority |
|--------------|-----------------------------|
| VIETNAM | STATE SECURITIES COMMISSION |

Which authority is responsible for takeovers in your jurisdiction?

Many relevant authorities are responsible for takeovers in Vietnam, which are:
 The People's Committees of Provinces and Cities are responsible for the companies which are set up by the Law on Enterprise;
 The Ministry of Finance, the regulatory ministry, the People's Committees of Provinces and Cities are responsible for the companies which are set up by Law on State Own Enterprise;
 The State Bank of Vietnam is responsible for credit institutions;
 The Ministry of Planning and Investment is responsible for the foreign invested companies;
 The State Securities Commission is responsible for the joint stock companies having their shares listed on the Securities Trading Center.

What regulations address the problem of takeovers?

- ☒ laws issued by President/Parliament
- ☒ implementing regulations issued by Government/SEC
- ☐ self-regulation issued by the market
- ☐ articles of the given company approved by shareholders

Investor disclosure obligations

(obligations relating to disclosing substantial ownership in publicly traded companies)

Are investors required to inform about the acquisition of substantial blocks of shares?

(e.g. to inform market about changes of the structure of share ownership)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Comments, if any The institutions, individuals must report to the State Securities Commission, Securities Trading Center/ Stock Exchange if holding or holding together with affiliated person up to 5%, 10%, 20% of the stake of one listed company and having transactions to increase or reduce the above level of ownership within 3 working days since the date of achieving, exceeding, or reducing such level. | |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. | |

Are the requirements related to the number of shares or to the votes on the general meeting of shareholders?

(e.g. in case of preferred shares the number of shares differs from number of votes)

| |
|---|
| <input checked="" type="checkbox"/> shares <input type="checkbox"/> votes |
| Comments, if any |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. |

What are disclosure thresholds?

(e.g. 5%, 10%)

| |
|--|
| The institutions, individuals must report to the State Securities Commission, Securities Trading Center/ Stock Exchange if holding or holding together with affiliated person up to 5%, 10%, 20% of the stake of one listed company and having transactions to increase or reduce the above level of ownership within 3 working days since the date of achieving, exceeding, or reducing such level. |
| The institutions, individuals having intention of holding up to 25% stake or holding over 25% stake of one listed company must report to the State Securities Commission, Securities Trading Center/ Stock Exchange and notify the listed company within 3 days before the date of execution of the transaction. |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. |

Whom the investor is obliged to inform and when?

| | |
|--|---|
| <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> exchange <input type="checkbox"/> news agency <input checked="" type="checkbox"/> a company <input type="checkbox"/> other | Deadline _____ 3 days _____ Deadline _____ 3 days _____ Deadline _____ Deadline _____ 3 days _____ Deadline _____ |
| Comments, if any | |
| Reference in the law | |

Are the requirements related to acquisition or to disposal of shares?

| |
|---|
| <input type="checkbox"/> acquisition <input type="checkbox"/> disposal <input checked="" type="checkbox"/> both |
| Comments, if any |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. |

What is the sanction in case of failure to disclose shareholding in listed companies?

| |
|---|
| The institutions, individuals holding or holding together with affiliated persons up to 5%, 10%, 20% of the stake of one listed company and having transactions to increase or reduce the above level of ownership and fail to report to the State Securities Commission, Securities Trading Center/ Stock Exchange shall have to sell the exceed volume within 6 months. |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. |

Is the supervisory authority entitled to verify investors' shareholding in listed companies?

| | |
|--|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any (what would be the procedure for verification of such shareholding) | |
| Reference in the law | |

What are your regulations concerning capital groups and market participants acting in concert (*acting in concert meaning oral or written agreement of any kind for the purpose of achieving a specific goal in the company*)?

| |
|---|
| If having any written agreement with members of Board of Directors and major shareholders of the target listed company, the acquirer shall have to report to the State Securities Commission and make public announcement. The investor desires to acquire a listed company shall have to report to the State Securities Commission and Stock Exchange on the volume of shares and the ratio of holding of himself and affiliated persons. |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading. |

Public company disclosure obligations

(disclosure of shareholders of publicly traded companies)

Is a public company informed about acquisition/disposal of the shares of a given company?

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Comments, if any | |
| Reference in the law | |

What is the source of knowledge of company regarding acquisition/disposal of the shares of a given company?

| |
|----------------------|
| No answer |
| Reference in the law |

Is a public company required to inform about the acquisition/disposal of substantial blocks of the shares of a given company?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> supervisory authority <input checked="" type="checkbox"/> market <input checked="" type="checkbox"/> investors <input type="checkbox"/> other | No <input type="checkbox"/> |
| Comments, if any (is there any special procedure for providing such information) Issuer, listed company shall have to report to the State Securities Commission, Securities Trading Center and make public announcement if having intention to invest over 10% of their equity to another institution or if having decision of investment to from 10% of equity of another institution. | |
| Reference in the law The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the information disclosure on the securities market. | |

When is a public company obliged to inform about the investor's acquisition of substantial blocks of the shares of a given company?

(e.g. what is the deadline of informing supervisory body and/or the market about acquisition?)

The issuer, listed company shall have to report to the State Securities Commission, securities Trading Center, and Stock Exchange on this event within 24 hours from the date of the occurrence of such event.

Reference in the law

The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market;
The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the information disclosure on the securities market

What is the sanction in case of failure to disclose information on the investor's acquisition of substantial blocks of its shares?

Fine punishment from VND 200,000 to VND 500,000. If augmenting factor VND 5,000,000 fine is applicable.

Reference in the law

Tender offers

Is the investor obliged to announce a tender offer after exceeding a certain threshold of votes/shares (e.g. 20%, 33%, and 50% of the total number of votes/shares at the GMS)?

Yes ☒

No ☐

If yes, what is the threshold? Is the investor required to announce a tender offer when he exceeds that threshold in other way than the acquisition of shares?

(Exceeding certain threshold can be a result of other factors than acquiring shares, it can even be a result of activities undertaken by persons not related to the leading investors. Such exceeding can result from reducing the number of shares not owned by the leading investor (e.g. because of a redemption of part of the remaining shares) or from reducing the number of votes not held by the leading investor (e.g. because of converting part of the privileged shares into ordinary ones) etc. Please describe if your regulations refer to the activity of investor, or to the fact that the investor holds specified number of shares/votes).

Institution, individual and affiliated persons having intention to acquire upper 25% of the equity of a listed company shall have to report to the State Securities Commission, Securities Trading Center, and Stock Exchange and take public tender offer.

Reference in the law

The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.

Under what circumstances the company is not obliged to announce a tender offer after exceeding a certain threshold of votes/shares? What are the exemptions?

The acquirer having intention to simultaneously acquire upper 25% of the equity of a listed company shall have to take public tender offer

Reference in the law

The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.

Is an investor allowed to announce a tender offer to subscribe for the sale of a part of the remaining shares or is he required to announce a tender offer to subscribe for the sale of all remaining shares?

(e.g. investors are allowed to announce tender offer not for all remaining shares, but for X% of shares and subscriptions are reduced when more investors subscribe)

Whenever the acquirer holds upper 80% of the equity of a listed company this type of share shall be delisted. After 10 working days since the date of achieving the above level of ownership, the acquirer can offer for purchasing the rest shares from the other shareholders or the other shareholders can offer their shares to the acquirer and the acquirer shall have to buy those shares following the provisions on public tender offer.

Reference in the law

The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.

Is collateral for a tender offer required?

(e.g. investor announcing tender offer has to deposit the amount of money - or other assets- necessary to acquire shares in the offer)

Yes ☒

No ☐

Comments, if any

Reference in the law

The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.

Is the withdrawal of the announced tender offer allowed? What are the sanctions of such withdrawal?

(e.g. withdrawal after another tender offer for the same securities was announced; possible sanctions for withdrawal)

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> <p>In case that the subscription volume is bigger than the registered offered volume the acquirer can submit to the State Securities Commission for the cancellation of the takeovers and shall have to make public announcement when being approved.</p> <p>In some special circumstance and with the approval of the State Securities Commission, the acquirer can withdraw his takeovers proposal within the validity for public tender offer.</p> <p>No sanction of punishment applicable for this case.</p> | |
| <p>Reference in the law</p> <p>Draft of Guidelines for the Implementation of Regulation on membership and securities trading.</p> | |

What are the conditions for the changing of the take-over bid while the offer is open and what are the procedures for accepting the new offer?

(e.g. price in the new offer can not be lower than in the first offer and all investors who subscribed in the first offer are accepted)

| |
|--|
| <p>Within 10 working days before the end of the public tender offer, the acquirer can increase the offer price and shall have to make public announcement.</p> |
| <p>Reference in the law</p> <p>The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.</p> |

How is the price in a tender offer established?

Does it have to be equal for all investors?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments, if any</p> | |
| <p>Reference in the law</p> <p>The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.</p> | |

Is there a minimum price?

| | |
|---|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, how it is defined (<i>e.g. an average market price for a given period before the announcement</i>)?</p> <p>The tender offer price shall have to not lower than the close price of the target shares on the Securities Trading Center/ Stock Exchange on the date before the offer day.</p> | |
| <p>Reference in the law</p> <p>The Decree No 144/2003/ND-CP dated 18 November 2003 of the Government on securities and securities market; The draft of Guidelines on the implementation of the Decree No 144/2003/ND-CP on the membership and securities trading.</p> | |

Can the offered price be lower than the maximum price paid by an offer or in a preceding period (*e.g. over the last 12 months*)?

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| <p>Comments, if any</p> | |
| <p>Reference in the law</p> | |

Are there any requirements concerning the price paid by the investor after the take over? (*e.g. can the price paid immediately after the take over differ from the price offered in the take over process*)

| | |
|------------------------------|--|
| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| <p>Comments, if any</p> | |
| <p>Reference in the law</p> | |

What kind of problems do you face in enforcement of takeovers regulations?

The information disclosure of capital groups and market participants may have influence on the decision making on business operations of the company.

Do you think a seminar on takeovers should be organized?

| | |
|--|-----------------------------|
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>If yes, what kind of issues should be presented?</p> <p>Legal Framework of international markets</p> <p>Trading/ transfer system</p> <p>The agreements to achieve the objectives that can affect on the business of the company</p> <p>Capital groups</p> <p>Enforcement of disclosure requirements</p> | |