REGULATION OF PUBLIC M&A IN THE UK AND EUROPE

FOURTH EDITION

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Introduction

This is the 2021 edition of "Regulation of Public M&A in the UK and Europe", produced by Herbert Smith Freehills along with Arendt & Medernach SA (Luxembourg Law), Arthur Cox (Irish Law), Schellenberg Wittmer (Swiss Law) and Stibbe (Dutch Law).

The jurisdictions covered in this guide include:

- the UK;
- France;
- Germany;
- Ireland;
- Italy;
- Luxembourg;
- the Netherlands;
- Russia;
- Spain; and
- Switzerland.

The purpose of this guide is to summarise the rules applying across key European jurisdictions to certain issues arising in structuring and implementing Public M&A transactions.

As we move through 2021, the Public M&A market is continuing to adopt ever-greater care around deal execution, against the backdrop of increased protectionism and intervention by governments and a growing trend of shareholder activism. An increasing number of deals are being driven by private capital with plenty of dry powder; as well as the return of PE investors to the public markets, we are also seeing an increasing number of pension funds emerging as key participants.

The market, which was already becoming increasingly challenging for particular sectors such as retail, has of course been hit by the COVID-19 pandemic. It remains to be seen what the true long term impact will be, but, despite an understandable reduction in overall deal volumes (caused in particular by difficulties in pricing, negotiating and financing transactions), we expect the situation to continue to create opportunities for strategic acquisitions in the medium term.

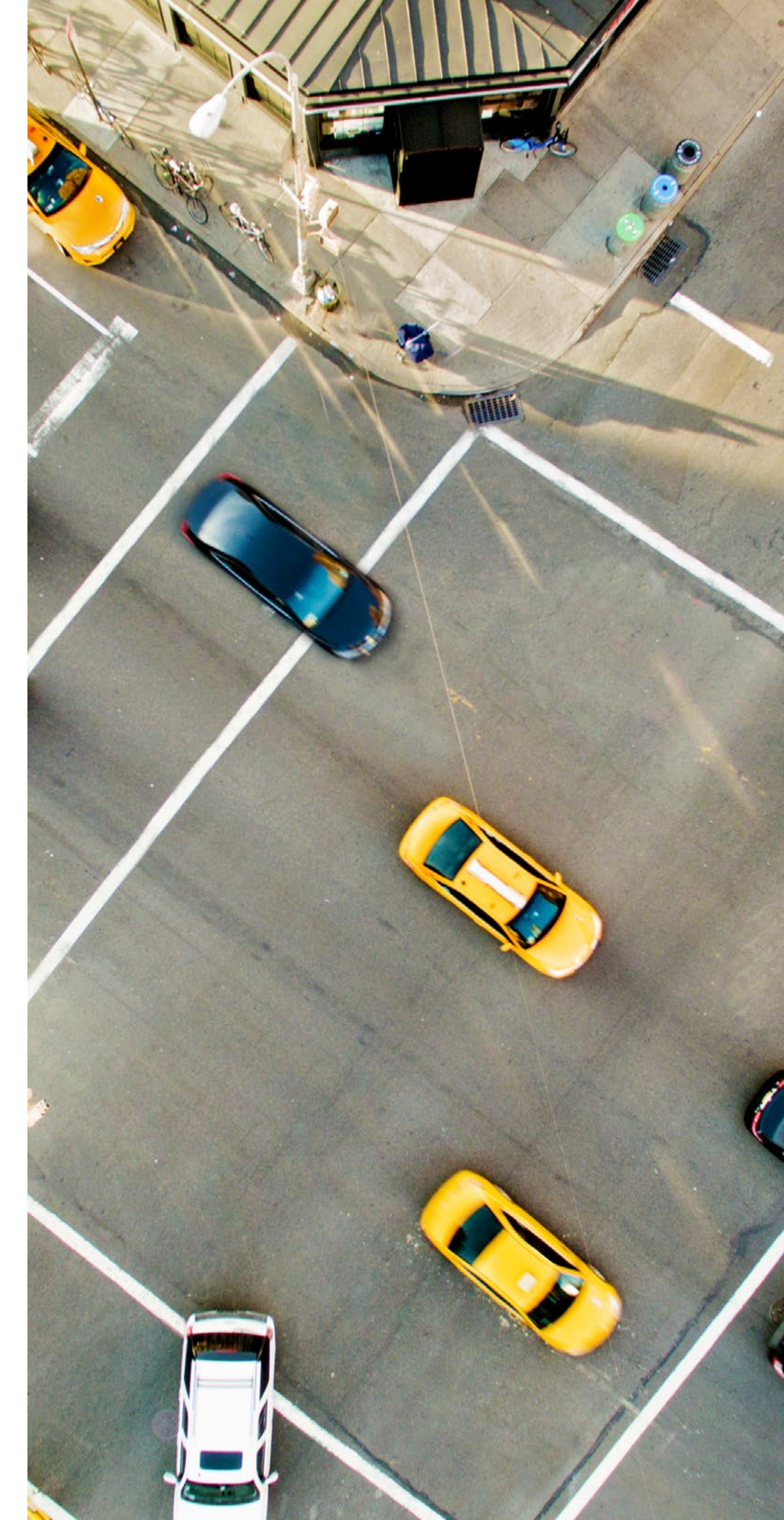
This guide reflects the latest law and market practice in the jurisdictions covered. In all cases, specific advice should be sought about the detailed application of the rules in each jurisdiction.

This guide is not intended to deal with the EU or national merger control regimes, their anti-trust regimes or foreign direct investment laws.

If you would like further information on any of the issues covered in this guide, please ask your usual contact.

Herbert Smith Freehills LLP
October 2021

The contents of this publication, current at the date of publication set out above, are for reference purposes only. They are a summary of the relevant rules, do not constitute legal advice and should not be relied upon as such. Specific legal advice about your particular circumstances should always be sought separately before taking any action based on this publication.



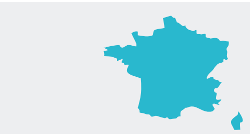
01 Typical takeover/merger structures

United Kingdom

Takeovers are typically structured as either a takeover offer or a court sanctioned scheme of arrangement.

Schemes of arrangement have become the most frequently used structure and accounted for approximately 73% of takeovers announced in the UK in 2020. Nonetheless, takeover offers are still common, particularly on hostile bids and in competitive situations.

It is usual for bidders to reserve the right to switch between the structures if permitted by the UK Panel on Takeovers and Mergers.



France

Control of a French public company is most frequently obtained through voluntary or mandatory public offers, as shown in the friendly public acquisition offer initiated by Capgemini on Altran. Hostile or unsolicited offers are allowed, but in practice they are less common than friendly offers. Nevertheless, a recent hostile offer took place (Veolia's takeover on Suez), but an agreement was ultimately reached. Statutory mergers or asset contributions are alternative structures, but are seldom used.

Germany

The most common means to take control over a German public company is through a voluntary public takeover offer under the Securities Acquisition and Takeover Act. A less common method is by a mandatory public takeover offer.

Control may also be obtained by a statutory merger procedure (which is available for German companies as well as for companies from other EEA States). However, this procedure is very rarely used to obtain control over a German public company. Depending on the respective structure of the statutory merger procedures, an obligation to carry out a mandatory public takeover offer may exist in addition to the merger procedure.

Ireland

Takeovers are usually structured as a takeover offer or a court sanctioned scheme of arrangement.

Schemes of arrangement are used more frequently, but they can only be used where an acquisition is recommended.

Bidders may reserve the right to switch from an offer to a scheme or vice versa, subject to Irish Takeover Panel consent.

Italy

The main way of obtaining control of an Italian public company is through an all-share or partial voluntary tender offer.

In certain circumstances, the acquisition of a relevant stake in a listed issuer may be exempt from the obligation to launch a mandatory tender offer. The acquisition of a relevant interest by way of a merger triggers the obligation to launch a mandatory tender offer, unless certain circumstances occur, including the approval of the merger resolution by the majority of the target's shareholders attending the shareholders' meeting other than:

the shareholder acquiring the shareholding that exceeds the relevant threshold, and

shareholders acting in concert or individual shareholders holding an absolute or relative majority shareholding at least exceeding 10% of the target's share capital (excluding the bidder, parties acting in concert and shareholders owning more than 10%).

Typical takeover/merger structures

Luxembourg

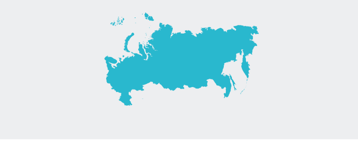
Control over a Luxembourg public company is usually acquired by way of a takeover bid. Takeover bids are either voluntary or mandatory in accordance with the provisions of the Luxembourg law of 19 May 2006 implementing the Takeover Directive on takeover bids, as amended (the "Luxembourg Takeover Law").

In so far as most Luxembourg incorporated public companies have their shares admitted to trading in a jurisdiction other than Luxembourg, a takeover bid for a Luxembourg public company is typically influenced by the laws of the jurisdiction in which the companies' securities are admitted to trading.

The Netherlands

The principal way of obtaining control of a Dutch public company is through a public offer.

Statutory mergers are rare but may be used for share-for-share exchanges. There are limits on the level of cash consideration allowed. Dutch law does not provide for a 'cash-out merger' ie a merger in which shareholders in the acquired company receive cash for their shares rather than shares in the acquiring company. A legal merger under Dutch law is essentially an exchange of shares, subject to the exception that cash payments may be made to account for exchange ratio discrepancies, up to a maximum of 10% of the aggregate nominal value of the newly issued share capital. In the event of a cross-border merger, minority shareholders who voted against the merger may be awarded compensation that exceeds 10% of the aggregate nominal value of the newly issued share capital.



Russia

Takeovers of a Russian public company (a public joint stock company, formerly known as an 'open joint stock company') usually involve a mandatory public offer, and less often a voluntary public offer.

The successful bidder may, subject to certain threshold requirements, commence a squeeze-out process in relation to the remaining shareholders. Squeeze-out is also possible in limited circumstances following merger of a public company with another entity if the new entity is itself a public company or following accession of a legal entity into a public company.

Spain

Public offers are the main mechanism of obtaining control of a Spanish public company.

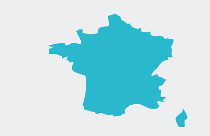
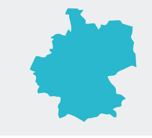
Subject to prior approval from the Spanish Securities Exchange Commission (Comision Nacional del Mercado de Valores), some mergers may be exempt from the obligation to launch a public offer as long as its main objective is not to gain control of the company and there are industrial reasons to support such merger.

Switzerland

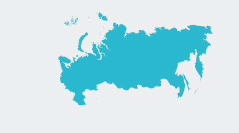
In Switzerland, the main means of obtaining control over a listed company is a public takeover offer (cash and/or exchange offers) pursuant to the Swiss takeover rules. A public takeover offer is usually followed by a subsequent squeeze-out or squeeze-out merger to acquire all remaining shares in the target.

Alternatively, control may be obtained by way of a statutory merger, pursuant to the Swiss Merger Act, but this type of acquisition mechanism between public companies is rather rare in practice and is limited to domestic transactions.

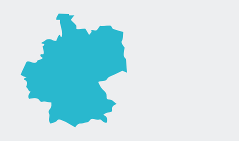
02 Law and regulation

United Kingdom	France	Germany	Ireland	Italy
				
Principal legislation and regulation				
The Companies Act 2006 and the City Code on Takeovers and Mergers (the "Code") are the main sources of legislation/regulation but the Financial Services and Markets Act 2000, UK Market Abuse Regulation, UK Prospectus Regulation and the Listing Rules, Prospectus Regulation Rules and Disclosure Guidance and Transparency Rules ("DTRs") are also relevant.	The Monetary and Financial Code (Code monétaire et financier), Commercial Code (Code de commerce) and General Regulations of the French Financial Markets Authority (the "General Regulations"). The Prospectus Regulation Rules and the EU Market Abuse Regulation are also relevant.	The German Securities Acquisition and Takeover Act (Wertpapiererwerbs - und Übernahmegesetz) ("WpÜG"), the WpÜG Offer Regulation (WpÜG-Angebotsverordnung), the WpÜG Applicability Regulation and related BaFin guidance provide the primary framework for mandatory and voluntary public offers, and the Reorganisation Act (Umwandlungsgesetz) for statutory merger procedures. In addition the German legal provisions relating to German stock corporations, market abuse, prospectuses, transparency and securities trading regulation may also be relevant.	The Irish Takeover Panel Act 1997 (as amended), the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the Irish Takeover Rules and Substantial Acquisition Rules provide the primary legislative framework for transactions, but the Irish legal provisions relating to market abuse, transparency, prospectuses and securities regulation are also relevant.	Legislative decree no. 58 of 24 February 1998 - Consolidated Law on Finance (Testo unico delle disposizioni in materia di intermediazione finanziaria) (the "Italian Financial Act") and Consob Regulation adopted with the resolution of 14 May 1999, no. 11971, concerning the regulation of issuers (the "Issuers Regulation"), as subsequently amended and supplemented.
Regulator				
The Panel on Takeovers and Mergers. The Financial Conduct Authority ("FCA") also has an important regulatory role.	The French Financial Markets Authority (Autorité des Marchés Financiers) ("AMF").	The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) ("BaFin").	The Irish Takeover Panel.	The National Companies and Stock Exchange Commission (Commissione Nazionale per le Societá e la Borsa) (the "Consob").

Merger regulation

Luxembourg	**The Netherlands**	 **Russia**	**Spain**	**Switzerland**
Principal legislation and regulation				
Luxembourg law of 10 August 1915 on commercial companies, as amended (the "1915 Law") and the Luxembourg Takeover Law. Luxembourg takeover provisions result from the implementation of the Takeover Directive only (ie there is no domestic takeover regime).	The Financial Supervision Act (Wet op het financieel toezicht) and the Public Takeover Bids Decree (Besluit Openbare Biedingen Wft).	Federal Law dated 26 December 1995 No. 208-FZ "On Joint Stock Companies" (the "JSC Law") is the main source of legislation/regulation. A number of regulations of the Central Bank of the Russian Federation, or the Bank of Russia, (the "CBR") and its predecessor, the Federal Service for Financial Markets, (the "FSFM"), including Federal Law dated 26 July 2006 No. 135-FZ, "On Protection of Competition", Federal Law dated 9 July 1999 No.160-FZ, "On Foreign Investment in Russian Federation", and Federal Law dated 29 April 2008 No. 57-FZ, "On the Procedure for Investing in Entities of Strategic Importance for State Defence and State Security", also apply.	Spanish Companies Act (Ley de Sociedades de Capital), Spanish Securities Market Act (Ley del Mercado de Valores), Act 6/2007 amending the Spanish Securities Market Act, Royal Decree 1066/2007 on Public Takeover bids, and the rules and resolutions issued by the CNMV.	Takeover offers: Federal Financial Markets Infrastructure Act of 19 June 2015, and its three implementing ordinances: (i) Ordinance on Financial Market Infrastructures of 25 November 2015, (ii) Ordinance of FINMA on Financial Market Infrastructures of 3 December 2015 and (iii) the Takeover Ordinance by the Swiss Takeover Board of 21 August 2008. Statutory mergers: Federal Law on Merger, Demerger, Conversion and Transfer of Assets and Liabilities of 3 October 2003 (the "Swiss Merger Act").
Regulator				
The Commission de Surveillance du Secteur Financier (the "CSSF").	The Authority for the Financial Markets (Autoriteit Financiële Markten) (the "AFM").	The Central Bank of the Russian Federation (the "CBR").	The Comisión Nacional del Mercado de Valores (the "CNMV").	The Swiss Takeover Board (the "TOB"). The Swiss Financial Market Supervisory Authority (the "FINMA").

03 Means of obtaining control

United Kingdom	France	 Germany	Ireland	Italy

Stakebuilding

Stakebuilding is permitted in each jurisdiction, subject to the mandatory bid thresholds and other restrictions set out below and the disclosure obligations set out in section 5.

Mandatory bid thresholds

United Kingdom	France	Germany	Ireland	Italy
A person (or persons acting in concert) acquires an interest in shares carrying 30% or more of the voting rights in a company. A person (or persons acting in concert) holding between 30% and 50% of a company's voting rights acquires an interest in shares which increases its percentage holding of voting rights. In both cases, subject to certain limited exceptions.	The crossing of 30% holding of the share capital or voting rights. A person already holding between 30% and 50% of a company's capital or voting rights which acquires an additional interest in excess of 1% of the company's capital or voting rights within 12 months: acquisition speed limit (excès de vitesse d'acquisition). The above thresholds are calculated taking into account direct and indirect shareholdings held by companies in the same group or by persons acting in concert. The AMF may grant exemptions.	A mandatory public takeover offer must be launched if a person (or a person acting in concert) directly or indirectly acquires an interest in shares carrying 30% or more of the voting rights in a company. BaFin may grant exemptions.	• A person (or persons acting in concert) acquires a direct or indirect holding of securities representing 30% or more of the voting rights in a company. • A person (or persons acting in concert) holding between 30% and 50% of a company's voting rights acquires additional securities that increase its percentage holding of voting rights by more than 0.05% within a 12-month period. Substantial Acquisition Rules: subject to the available exemptions, a person (or persons acting in concert) may not acquire voting securities or rights over voting securities conferring 10% or more of the voting rights in a company where that acquisition (or a series of acquisitions within a seven-day period) would result in that person holding 15% or more, but less than 30%, of the voting rights in the company.	More than 30% of voting rights on resolutions concerning the appointment or removal of directors through a direct or indirect acquisition of shares or increase of voting rights, or through third parties acting in concert. For companies which are not small and medium enterprises ("SMEs"), a mandatory bid is also triggered if anyone exceeds, including through third parties acting in concert, the threshold of 25% of voting rights (or share capital), where there is no other shareholder with a higher stake. By-laws may specify a different threshold between 25% and 40%. A person holding between 30% and 50% of a company's voting rights acquiring, either directly or indirectly, more than 5% of the company's voting stock, either through an acquisition of shares or an increase of voting rights within a period of less than 12 months.

Means of obtaining control

Irrevocable undertakings

United Kingdom

Soft irrevocable undertakings (ie those which allow the shareholder to accept a higher competing offer) are common.

Hard irrevocable undertakings (ie those which bind the shareholder to accept even if a higher offer is made) are also given but less so by institutional shareholders. Undertakings by institutional shareholders which only fall away if the higher offer is at a specified percentage above the first offer (usually if a matching or topping right is not exercised) have become more common.

Directors may give irrevocable undertakings in their capacity as shareholder and the undertakings must not relate to their position as directors. For example, such undertakings cannot relate to soliciting a competing offer, recommending an offer or conducting target business in a particular manner during the offer period, amongst others. It is market practice for directors to give hard irrevocable undertakings save where a director has a very significant stake.

Disclosure obligations apply.

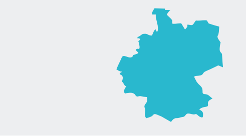
France

Irrevocable undertakings are valid in principle provided that they do not make a competing offer impossible and therefore breach the key principle of fair interplay of offers (whether an irrevocable undertaking may render a competing offer impossible usually depends on the target's shareholding structure as well as on the identity of and stake held by the selling shareholder).

For this reason, irrevocable undertakings generally include "sunset clauses", pursuant to which a shareholder commits to transfer its shares in the target to the bidder unless a competing bid is approved by the AMF.

Irrevocable undertakings therefore do not give the bidder a fully secured position.

Disclosure obligations apply.



Germany

Soft irrevocable undertakings (ie those which allow the shareholder to accept a higher competing offer) are common, but hard irrevocable undertakings (ie those which bind the shareholder to accept even if a higher offer is made) are less common though still permitted. Further, there is a variant irrevocable undertaking, where major shareholders and the bidder agree on a hard irrevocable undertaking in principle which may be terminated if the offer price under a competing offer exceeds the price under the irrevocable for a specified percentage (so-called semi-soft irrevocable undertakings).

Disclosure obligations apply.

Ireland

Hard irrevocable undertakings are usually given by the directors of the target company in a recommended transaction, in their capacity as shareholders (ie not fettering their exercise of discretion as a director). Shareholders may give hard irrevocable undertakings, but it is more usual for institutional shareholders to give soft irrevocables or simply letters confirming their intention to accept the offer/vote in favour of the scheme.

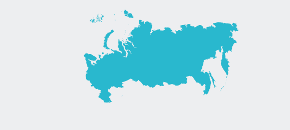
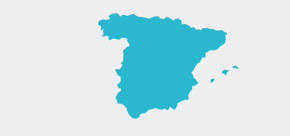
Disclosure of the undertakings (including any circumstances in which they cease to apply) is required.

Italy

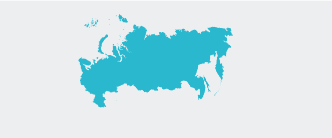
Shareholders may undertake to accept an offer but such undertakings are considered to be "shareholders' agreements". Parties to shareholders' agreements are entitled to withdraw without notice if they intend to accept a mandatory takeover bid, or a takeover bid for at least 60% of the company's securities, subject to certain conditions.

Disclosure obligations apply.

Means of obtaining control

Luxembourg	The Netherlands	Russia	Spain	Switzerland
				
Mandatory bid thresholds				
A natural or legal person, alone or in concert, acquires securities with voting rights attached, which, added to any existing holdings of those securities reaches 33.33% of all voting rights in the target ("Control"). All securities with voting rights attached of the target are taken into account when calculating the controlling percentage. If the acquisition of Control is the result of a voluntary takeover bid there is no obligation to make a mandatory tender offer for all remaining securities of the target. No mandatory takeover bid is required where a person after having acquired control over a company acquires additional securities in that company, and thus reinforces that control. The CSSF may, under certain circumstances, grant derogation from the obligation to launch a mandatory bid.	A person (solely or acting in concert) acquires or has acquired 30% or more of the direct or indirect voting rights in the general meeting of a company, subject to certain exemptions.	The acquisition of more than 30%, more than 50% or more than 75% of a company's voting shares. A mandatory public offer must be submitted to the target within 35 days from the date on which the obligation to make it has arisen.	30% or more of voting rights through an acquisition of shares and/or voting rights or acting in concert with third parties (without an acquisition). A person holding a percentage lower than 30% appoints, within 24 months of the acquisition of its interest (construed widely), more than half of the directors on the target company's board. In the case of a shareholder which held a stake of between 30% and 50% on 13 August 2007, it reaches a percentage of voting rights equal to or in excess of 50%.	A person (or persons acting in concert) directly or indirectly acquires an interest in equity securities carrying 33.33% or more of the voting rights in a company. A person (or persons acting in concert), directly or indirectly holding an interest in equity securities carrying between 33.33% and 50% of the voting rights in a company on or after 1 February 1997, acquires an interest in additional equity securities and, as a result, holds more than 50% of the voting rights in the company. TOB may grant exemptions. The articles of incorporation of listed Swiss companies may provide for a higher threshold of up to 49% (instead of 33.33%) ("opting-up") or declare the mandatory offer obligations to be inapplicable ("opting-out").

Means of obtaining control

Luxembourg	**The Netherlands**	 **Russia**	**Spain**	**Switzerland**
Irrevocable undertakings				
Both soft and hard irrevocable undertakings are permitted. Hard irrevocable undertakings and conditional share purchase agreements with major shareholders are common. Disclosure obligations apply.	Irrevocable undertakings are common. Disclosure obligations apply. A "voting undertaking" regarding certain resolutions to be adopted at a general meeting in connection with the offer will not lead to a mandatory bid obligation, provided that it complies with certain requirements.	Undertakings to accept an offer can be revoked by the shareholders at any time before the expiry of the offer acceptance period.	Hard and soft irrevocable undertakings are possible and soft irrevocable undertakings are common. Disclosure obligations apply.	Soft irrevocable undertakings are common. Hard irrevocable undertakings are not enforceable as they frustrate the mandatory right of the selling shareholder to choose freely among competing offers. Disclosure obligations may apply.

04 Can the bidder buy shares at a price above the offer price?

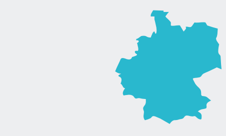
United Kingdom

If the bidder (or a concert party) acquires an interest in shares in the three months before the start of an offer period, the offer must normally be made at a no less favourable price and if it acquires shares during the offer period at above the offer price, it must increase the offer to that higher price.

France

Except when acquisitions result from the execution of an agreement entered into before the pre-offer period, no purchase can be made by the bidder (or a concert party) during the pre-offer period, (ie between the announcement of an offer and the filing of an offer with the AMF) (which constitutes the opening of the "offer period"). Subject to certain limits and conditions, when the offer is a cash offer, certain market purchases can be made by the bidder (or a concerting party) during the offer period.

If market purchases are made at a price above the offer price, the offer price is automatically raised to match the higher of (i) the price paid or (ii) 102% of the initial offer price. The bidder cannot make market purchases above the offer price after the cut-off date for placing counter offers (ie the fifth day preceding the closing of the offer).



Germany

In general yes, but certain purchases will influence the offer price:

The offer price may not be less favourable than the price paid by the bidder in any purchase of target shares in the last six months prior to publication of the offer document.

If the bidder purchases shares during the offer period at a price higher than the offer price, the offer price must be increased to such higher price.

If the bidder acquires or enters into agreements which entitle them to acquire shares within one year after publication of the results of its offer at a higher price than the offer price, all shareholders that accepted the offer are entitled to the difference between the offer price and such higher price. However, this does not apply for purchases by the bidder over a stock exchange. Certain other exemptions apply.

Ireland

Purchases by the bidder (or its concert parties) during the three months before the start of an offer period will set a "floor" on the offer price. This period can be extended to 12 months by the Irish Takeover Panel if it regards this as more appropriate in the circumstances of the case, but we are unaware of this extension having been invoked.

If the bidder (or its concert parties) acquires shares during the offer period above the offer price, the offer price must be increased to match the acquisition price.

Italy

As regards mandatory tender offers, the offer price cannot be lower than the highest price paid by the bidder, or any other person acting in concert, for each class of securities in the 12 months prior to the announcement of the offer.

If, during the offer period, the bidder and/or any person acting in concert, directly or indirectly acquire: (a) financial instruments that are the subject of the offer; or (b) long positions with such underlying financial instruments, whose price is higher than the offer price, the bidder must adjust the offer price accordingly.

If in the six months following the deadline for the payment of the consideration, the bidder, directly or indirectly, acquires more than 0.1% of the financial instruments that were the subject of the offer at a price higher than the offer price, the bidder must pay the difference to the shareholders who tendered their shares.

Under certain conditions, these rules do not apply to acquisitions at market price.

Can the bidder buy shares at a price above the offer price?

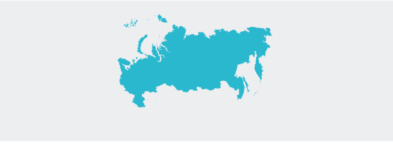
Luxembourg

If the bidder acquires securities during the offer period above the offer price, it must increase the offer to that higher price. If the bidder (or a party acting in concert with the bidder) acquires securities in the twelve months before the start of an offer period, the offer must normally be made at a no less favourable price.

The Netherlands

A bidder may purchase shares before and during the offer period in normal trades on regulated markets without being required to revise its bid (subject to the mandatory bid threshold and the disclosure obligations set out in section 5).

If, during the period from the announcement of the offer until the moment the offer is declared unconditional, the bidder acquires securities that are subject to the offer at a price higher than the offer price through transactions other than normal trades on regulated markets, it must increase the offer price to such higher price.



Russia

During the offer period the bidder may not buy shares which are subject to the offer at a price which differs from the offer price (ie lower or higher than the offer price).

The bidder may increase the offer price during the offer period.

Spain

Prior to the announcement of the offer, if the bidder has paid a higher price for shares of the target in the 12-month period prior to the launch of the bid, such price will be deemed a floor for the offer price.

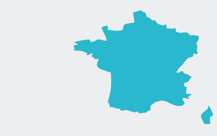
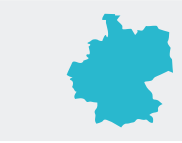
Once the offer is launched, the bidder is entitled to acquire shares at a price above the offer price. However, such acquisitions would result in the automatic adjustment of the offer price to match the highest price paid by the bidder for those shares.

Switzerland

A bidder may purchase shares during the offer period but must treat all shareholders equally:

- "Best price rule": if within a period starting with the publication of the offer (or the pre-announcement) and ending six months after the expiry of the additional acceptance period (see section 16 below), the bidder (or a person acting in concert with the bidder) acquires target shares at a price higher than the offer price, the bidder is obliged to offer that higher price to all addressees of the public offer.
- If during a share for share exchange offer, the bidder (or a person acting in concert with the bidder) acquires target shares for cash it must offer a cash alternative to all addressees of the public offer.
- In case of mandatory bids and voluntary bids seeking control additional requirements apply (minimum price rules).

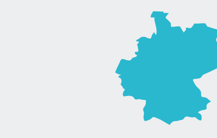
05 Disclosure of interests and dealings in shares and other instruments

United Kingdom	 France	 Germany	Ireland	Italy
General disclosure requirements (applicable both inside and outside a takeover situation)				
Shareholders are subject to the disclosure regime in the DTRs, that requires disclosure of dealings which cause a shareholder's interest in the company's voting rights (either through holding of shares or contracts for difference ("CFDs") or other instruments with the same economic effect when aggregated together) to reach, exceed or fall below 3% and each whole percentage point above 3% (different rules apply for non-UK issuers). Disclosure of CFDs and certain other derivatives is required on a "delta adjusted" basis (compared with a nominal basis under the Code). All disclosures must be made to the company and, if the company's shares are traded on a regulated market, to the FCA.	Shareholders (acting alone or in concert) are required to disclose dealings taking their shareholdings at, above or below 5%, 10%, 15%, 20%, 25%, 30%, 33.33%, 50%, 66.66%, 90% or 95% of a listed company's capital or voting rights to the company and the AMF within four trading days. Additional (including lower but no less than 0.5%) thresholds may apply if provided for in the by-laws of the target and disclosed to the target only. When the 10%, 15%, 20% or 25% threshold is crossed, the shareholder is also required to declare, within five trading days, its intentions with respect to the company over the next 6 months. Direct and indirect interests need to be disclosed, including certain securities or financial instruments (eg cash settled equity swaps or CFDs), which need to be taken into consideration for the purpose of threshold calculations.	Shareholders are required to disclose dealings taking their actual interest in the company's voting rights at, above or below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the company's voting rights to the company and to BaFin. The same requirement applies with respect to financial instruments entitling its holder to acquire voting rights in the company (eg physically and cash settled instruments). Financial instruments without the right of physical delivery of shares in the company (eg cash settled equity swaps or CFDs) must also be disclosed and, except for the 3% threshold, the same thresholds as above apply. Further, shareholders reaching or exceeding the thresholds of 10%, 15%, 20%, 25%, 30%, 50% and 75% of the company's voting rights must inform the company about certain objectives of the acquisition; and the sourcing of the funds used for the acquisition.	For Irish companies listed on a regulated market in the EU (ie the Main Securities Market of the Irish Stock Exchange), disclosure must be made to the competent authority (the Central Bank of Ireland for Irish companies) and the company within two trading days under transparency (regulated markets) law when the percentage of voting rights reaches, exceeds or falls below 3% and every 1% thereafter. For Irish companies listed on the London Stock Exchange, disclosure must be made under the DTRs where the percentage of voting rights reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. For other Irish companies (eg those listed in the US or elsewhere), disclosure of interests of 3% or more must be made within five days.	Shareholders are required to disclose dealings taking their actual interest in the company's voting rights which exceeds or falls below the thresholds of 3% (only for companies other than SMEs), 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6% and 90% to the Consob and the company. Shareholders are also required to disclose holdings in financial instruments which exceed or fall below 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 66.6%. According to Consob resolution adopted on 13 January 2021, no. 21672, until 13 April 2021 (save for early revocation or renovation), the entry threshold of shareholding to be reported is equal to 1% for certain companies other than SMEs, and 3% for listed SMEs.

Disclosure of interests and dealings in shares and other instruments

United Kingdom

France



Germany

Ireland

Italy

In a takeover situation (only)

United Kingdom

During an offer period, dealings by the parties to the offer (ie bidder and target) and their respective concert parties, in the securities of the parties to the offer (except a cash bidder) and dealings by any person who has an interest in 1% or more in any party to the offer (except a cash bidder) must be disclosed by, respectively, 12 noon and 3.30pm on the business day after the dealing.

Interests for these purposes include long economic exposures to price volatility in securities, so catches cash-settled CFDs.

In addition, the bidder, the target and any person who has an interest in 1% or more of the voting rights in any party to the offer (other than a cash bidder) are required to make opening position disclosures, containing details of interests in any party to the offer (other than a cash bidder), within 10 business days of the identification of the bidder/ transaction becoming public.

There is no Code requirement for disclosure of short only positions. Securities lending is not usually caught.

France

During an offer period, in addition to the general disclosure requirements set out above, any transaction resulting, or capable of resulting, in an immediate or future transfer of the target's securities or voting rights, including through financial instruments or agreements having an economic effect similar to the ownership of the underlying shares, by the bidder, the target, their officers, directors or advisers, as well as individuals or entities holding, directly or indirectly, (acting alone or in concert) at least 5% of the target's share capital or voting rights or securities other than shares targeted by the offer, must be disclosed to the AMF on the trading day after the dealing at latest.

This obligation also applies to any individual or entity who has increased its direct or indirect shareholding by at least 1% of the target's share capital or 1% of the securities other than the shares targeted by the offer since the start of the offer period (alone or in concert) or the pre-offer period if any.

Any individual or entity (other than the bidder) increasing its shareholding in the target by more than 2% or increasing its shareholding if holding more than 5%, must immediately disclose its objectives in relation to the offer to the AMF.

Germany

In addition to the general disclosure requirements set out above, during the offer period any acquisition of shares and of instruments entitling its holder to unilaterally acquire shares in the target must be disclosed. The same applies to acquisitions of shares in the target within one year of the publication of the results of the bid. The disclosure must include the price paid in such acquisition.

Cash-settled options. CFDs and similar instruments are subject to these special disclosure rules applying in a takeover situation.

Such disclosures must be made on a weekly basis, and in the last week of the offer period on a daily basis

Ireland

During an offer period, dealings by: (i) the bidder, the target and their associates; and (ii) by any person who is interested in 1% or more of any class of relevant securities (which includes bidder securities where the offer is not entirely for cash) must be publicly disclosed by: 12 noon in the case of (i) above; and 3.30 pm in the case of (ii) above, on the business day after the date of the transaction.

For these purposes, an interest means a long position in a security, including where a person will be economically advantaged/disadvantaged if the price of the security increases/decreases, so that cash-settled CFDs are included; and relevant securities means securities with voting rights, equity share capital, securities with the same rights as the consideration securities offered by the bidder, and securities convertible into any of the foregoing.

Italy

During the period from the announcement of the offer to the date of payment of the offer price to shareholders, dealings by certain parties including the bidder, the target and certain connected parties must be disclosed to Consob and the market by the end of the business day on which the transaction occurred. The bidder and any person acting in concert with the bidder must also notify Consob and the market of the intention to sell the financial instruments involved in the offer by the end of the business day preceding the date scheduled for the sale.

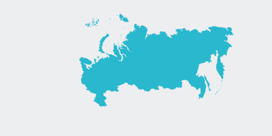
In the six months following the payment of the offer consideration, the bidder and the persons acting in concert with the bidder have to notify the Consob, on a monthly basis, of dealings carried out in that month, including the essential terms thereof.

These disclosure obligations apply to dealings in shares and other financial instruments giving the right to physical or cash settlement.

Disclosure of interests and dealings in shares and other instruments

Luxembourg

The Netherlands



Russia

Spain

Switzerland

General disclosure requirements (applicable both inside and outside a takeover situation)

Luxembourg

A shareholder who acquires or disposes of shares (including depositary receipts representing shares) of a Luxembourg company whose shares (including depositary receipts representing shares) are admitted to trading on a regulated market and to which voting rights are attached, shall notify the company and the CSSF of the proportion of voting rights held as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 33.33%, 50% and 66.67%. Notification must be made promptly and in any event no later than within four trading days.

The same notification obligation applies to any natural person or legal entity which holds, directly or indirectly, so-called special financial instruments that give the holder the unconditional right to acquire or the discretion as to his right to acquire, shares of the company.

The Netherlands

Shareholders are required to disclose dealings taking their interests at, above or below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95% of the company's shares or voting rights to the AFM.

The requirements also apply to indirect holdings, potential holdings and economic interests in shares (eg through derivatives). The various percentages held have to be added up for disclosure purposes.

Shareholders should disclose their full legal and economic interest (both long and short positions) if they request to have an item placed on the agenda of the general meeting. Such disclosed economic interest needs to be published on the website of the company from the moment the general meeting is convened

Russia

A public company must publicly disclose any dealings which result in a shareholder acquiring at least 5% in aggregate of the company's ordinary shares and any changes in its shareholdings above or below 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% and 95% of the company's ordinary shares.

This applies to direct dealings with the company's shares and also indirect dealings (eg dealings in the shares of a company ultimately holding shares in a Russian public joint stock company), as well as to dealings in depository receipts which entail a right to vote. The shareholdings of persons who are subject to an agreement relating to the voting of shares in a public joint stock company (whether directly or indirectly) may be aggregated.

In addition, any dealings with the company's shares or depository receipts by its subsidiaries should be disclosed, regardless of the number of notes acquired or disposed of.

Spain

A shareholder acquiring or transferring shares of a Spanish listed company will have to disclose the percentage of voting rights that remain in its ownership when that percentage exceeds or falls below the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 60%, 70%, 75%, 80% and 90%.

For these purposes any financial instruments giving the holder an unconditional right to acquire the target shares will be treated as shares.

Acquisitions of shares exclusively for compensation or liquidation in the usual short-term cycle will not be subject to the notification obligation. Cash-settled derivatives will only give rise to this disclosure obligation if the derivative includes the option to acquire the ownership of the shares at settlement.

Switzerland

Anyone who acquires or disposes of shares (or related financial instruments) of a Swiss or non-Swiss company whose shares are listed in Switzerland and reaches, falls below or exceeds the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33.33%, 50% or 66.67% must notify the company and the Swiss stock exchange(s) on which the equity securities are listed. The disclosure obligations apply to any direct or indirect acquisition of shares and to acquisitions or disposals by persons acting in concert.

The requirements also apply to financial instruments including acquisition or sale rights relating to shares but also instruments without the right of physical delivery of shares (eg cash settled options).

Disclosure of interests and dealings in shares and other instruments

In a takeover situation (only)

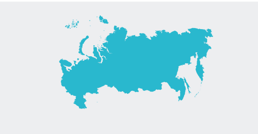
Luxembourg

The offeror is required to communicate to the CSSF and to disclose the number of securities (specifying the number of inherent voting rights) for which their bid has been accepted or which belong to them, or to the persons acting in concert respectively:

- every 7 days from the publication of the offer document;
- every morning of the last 7 days of the acceptance period; and
- on the evening of the last day of the acceptance period.

The Netherlands

From the moment that the public offer is announced to the moment that a public announcement is made declaring the offer unconditional, the bidder and the target must make public announcements concerning any transactions they each conduct in the securities to which the public offer pertains (or in the securities that are offered in exchange, if applicable), or else of any agreements they conclude in connection with those transactions.



Russia

In the case of a mandatory or voluntary public offer, during the offer period the bidder is prohibited from acquiring the target's securities in respect of which the offer has been made on terms which are different from the terms of the offer. To the extent that the acquisition of shares in the target is permitted, general disclosure requirements and thresholds apply.

If, prior to the expiry of the offer period, the shareholding of the bidder changes by more than 10%, the bidder must amend the offer to reflect the then-current shareholding. Such amendments to a public offer must be made available to the CBR, the target and the persons to whom the offer is addressed in the same way as the original offer.

Spain

Where, from the date of the announcement of the takeover bid, the acquisition of voting rights in the target company reaches or exceeds 1%, disclosure must be made. In addition, those shareholders who at the time of the bid owned 3% or more of the voting rights of the target company will have to disclose any dealings which modify this percentage.

For these purposes any financial instruments giving the holder an unconditional right to acquire the target shares will be treated as shares.

Acquisitions of shares exclusively for the purposes of compensation or liquidation in the short-term will not be subject to the notification obligation.

Switzerland

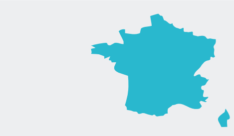
From the moment a tender offer is announced until the end of the additional acceptance period (see section 16 below), the bidder, any person acting in concert with the bidder and the significant shareholders holding more than 3% of the voting rights of the target company must report all acquisitions and disposals of equity securities in the target company and, as the case may be, in the company whose securities are offered in an exchange offer to the TOB and the relevant stock exchange(s) by noon on the trading day after the date of the transaction.

06 When is an announcement of an offer/possible offer required and how should it be made?

When?

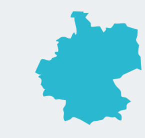
United Kingdom

- A firm intention to make an offer is notified to the target board.
- An obligation to make a mandatory offer arises.
- Following an approach, when the target is the subject of rumour or speculation or there is an untoward movement in its share price.
- After a potential bidder first actively considers an offer but before an approach, the target is the subject of rumour or speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that this has been caused by the bidder's actions or intentions.
- Negotiations or discussions are about to be extended beyond a very restricted number of people.
- A buyer is being sought by the target for an interest, in shares carrying 30% or more of its voting rights and either (a) target is the subject of rumour or speculation or there is an untoward movement in its share price, or (b) negotiations are about to be extended beyond a very restricted number of people. Dispensations are available if target announces a "formal sale process" to seek potential bidders.



France

- Prior to the filing of an offer with the AMF, upon the filing of an offer with the AMF or at the request of the AMF in the event of unusual changes in the target shares' trading volumes or prices (see "put up or shut up" rules detailed in section 7 below for more details).
- As a general rule, during the preparation of any financial transaction likely to have significant impact in the market price of a financial instrument, the bidder must disclose the characteristics of said transaction to the public.
- Also, any price sensitive information (as inside information) must be disclosed to the public by the issuer (the target/bidder) without delay. The issuer may decide to delay its disclosure, if the conditions under the EU Market Abuse Regulation are met.
- The above general rule applies to the target when it is approached and to the bidder if it is listed are met.



Germany

- Voluntary offer: Without undue delay after the bidder has taken the decision to launch an offer. In practice, this means immediately or a couple of hours after the decision.
- Mandatory offer: Without undue delay (but in no event later than seven calendar days) after the acquisition of an interest in target shares that gives rise to a mandatory bid obligation (ie resulting in a holding of at least 30% of the voting rights in the target

Ireland

Unless the Irish Takeover Panel consents otherwise:

- When a firm intention to make an offer is notified to the target board.
- When an obligation to make a mandatory offer arises.
- When, following an approach by the bidder to the target, the target is the subject of rumour or speculation or there is an anomalous movement in its share price.
- When, before an approach by the bidder to the target, the target is the subject of rumour or speculation or there is an anomalous movement in its share price and there are reasonable grounds for concluding that this has been caused by the bidder's actions or intentions.
- When negotiations or discussions are about to be extended beyond a very restricted number of people (including where the target is putting itself up for sale).

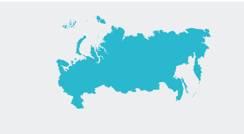
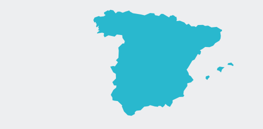
Italy

- When the bidder has taken the decision to launch a voluntary offer.
- Upon the acquisition of an interest in the target shares giving rise to a mandatory bid obligation (subject to exemptions).

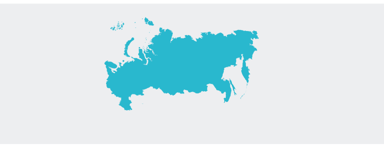
When is an announcement of an offer/possible offer required and how should it be made?

 United Kingdom	 France	 Germany	 Ireland	 Italy
How?				
Announcements should be made through a regulatory information service (eg RNS, Investegate etc.) and publication on the bidder/target's website (as appropriate) by 12 noon the following business day.	Where announced to the public: • Announcements are made through a primary information provider in order for the information to be disseminated effectively and in full (ie so that it reaches the widest possible audience in the shortest possible period of time). • Announcements prior to the filing of an offer with the AMF should be made through a press release, the content of which should be submitted to the AMF. • Upon the filing of an offer, the AMF publishes the main terms and conditions of the offer and the draft offer document is made available by the bidder.	A formal announcement of the decision to launch an offer must be published on the internet (bidder's website) and through a generally accepted electronic information system (eg Bloomberg, Reuters, etc.). The formal announcement is usually accompanied by a separate press release with more detailed background information. Prior to publication of the formal announcement/press release, the bidder must inform BaFin and the management of the stock exchanges on which the target shares (and derivatives) trade about the decision to launch the offer (in practice usually about 1 hour prior to publication of the formal announcement/press release).	Announcements should be made via any regulatory information service specified for the time being as a "Regulatory Information Service" or "RIS" in the Listing Rules published by Euronext Dublin, and copied to the Irish Takeover Panel. All announcements or documents published should be published on the relevant party's website by 12 noon on the following business day.	Notification should be made without delay to Consob and disclosed to the public and the target, in the manner specified by Consob.

When is an announcement of an offer/possible offer required and how should it be made?

Luxembourg	**The Netherlands**	 **Russia**	 **Spain**	**Switzerland**
When?				
The decision to make a bid must be made public by the bidder as soon as the decision has been made.	• Recommended offer: When the bidder and the target have reached an agreement (whether conditional or unconditional) on a public takeover. • Hostile offer: A bid will be regarded as announced if a bidder, without having reached (conditional) agreement with the target, has published the name of the target in combination with either the proposed offer price or exchange ratio, or a detailed offer timeline. However, the publication of concrete information pursuant to the rules relating to publication of price sensitive information is not deemed to constitute an announcement of an offer if the target promptly announces that it is in discussions with the bidder (but that it has not yet reached conditional agreement with the bidder). • Mandatory offer: Upon the acquisition of an interest in the target shares giving rise to a mandatory bid obligation (subject to exemptions and a grace period).	• No later than the day following the day the offer was submitted to the CBR (only where the shares of a target are publicly traded). • When the target receives the voluntary or mandatory offer from the bidder, it must disclose that it has received such offer by no later than the following day.	• For a voluntary takeover bid, as soon as the decision to launch the bid has been taken, provided that the bidder has ensured it can satisfy the consideration pursuant to the offer. • For mandatory takeover bids, the bidder shall immediately make an announcement upon gaining control and shall state in the relevant announcement, as applicable, whether (i) it will apply for dispensation, (ii) it intends to launch a takeover bid, and (iii) it intends to reduce its stake below the threshold triggering the obligation.	• Voluntary offer: without delay after the bidder has taken the decision to launch an offer. The bidder may reveal its intentions through direct publication of a takeover offer prospectus or in the form of a binding pre-announcement summarising the key terms of the takeover offer followed by a prospectus. In the vast majority of takeover offers, bidders launch the public offer by pre-announcement. The offer prospectus must be published within six weeks after publication of the pre-announcement. • Mandatory bid: after the acquisition of an interest of 33.33% or more of the voting rights in the target. The mandatory bid must be made within two months of exceeding this threshold

When is an announcement of an offer/possible offer required and how should it be made?

Luxembourg	The Netherlands	 Russia	Spain	Switzerland
How?				
Prior to the publication of the decision to launch a bid, the bidder must inform the CSSF of its decision. Immediately thereafter the decision is made public by a press release. Although the CSSF must be informed of the decision prior to the announcement, no formal approval of the content of the press release by the CSSF is required.	Announcements should be made by issuing a press release. No prior approval of press releases by the AFM is required.	Announcements to the general public must be made via a regulatory information service (eg Interfax, AK&M) and, in some cases, also on the website of the bidder.	The announcement shall be made simultaneously to the CNMV and to the market by virtue of filing a notice with the CNMV (Hecho Relevante).	The announcement (or pre-announcement) must be (i) published in German and French (and may sometimes be accompanied by an English version); (ii) published on the bidder's website or on a website dedicated to the public offer; (iii) delivered to the Swiss media (including at least one German and one French language newspaper), to the major news agencies active in Switzerland and to the financial information providers which distribute stock exchange information; and (iv) delivered to the TOB. Publication must occur at least 90 minutes before the start of trading or after the close of trading on the Swiss stock exchange. Further regulations governing ad hoc publicity may apply.

07 Put up or shut up

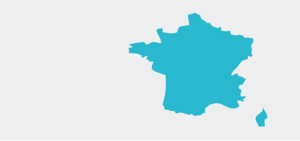
United Kingdom

Potential bidders must generally be named in the target's announcement which commences the offer period.

Whether it is a bidder's or a target's announcement which commences the offer period, a named bidder then has a strict deadline of 28 days by which to make an announcement of a firm intention to bid or announce that it is not going to make an offer, unless the target applies for an extension to the 28 days and is granted an extension by the Panel.

If a bidder makes an announcement that it is not going to make an offer for the target, it is prevented, (absent consent from the Panel or circumstances occurring specified by the bidder as circumstances in which the statement may be set aside), from making an offer for the target for a period of six months from the date of the announcement.

The Panel may grant a dispensation from the requirement for a possible offer to be announced, and for the potential bidder to be named, if the bidder ceases to actively consider making the offer ("downs tools").



France

The AMF may require a person to publicly clarify its intentions if it reasonably believes that such person is preparing a takeover bid. This statement may in particular be required when (i) there are market rumours, (ii) significant or unusual changes in the target shares' trading volumes or prices, (iii) advisers have been appointed to prepare an offer or (iv) there have been contacts between managers of the relevant companies.

If such person declares its intent to launch an offer, the AMF sets the date on which the bidder must publish a press release describing the main terms of the proposed offer (including the financial conditions, agenda and condition precedents of the offer, and any other information the AMF finds necessary).

If the bidder remains silent or declares that it does not intend to make an offer, it will in principle be barred, for a period of six months, from filing an offer on the target, or, alternatively, from acquiring shares in the company that would result in it having to make a mandatory bid (except in the event of material developments in the market environment or in the target's or the bidder's situation or share ownership).

Germany

No such rules exist under the German Takeover Act. General rules regarding the publication of inside information under the EU Market Abuse Regulation also do not require a potential bidder to comment on rumours in the market about a potential takeover bid. However, a potential bidder may be required to make a disclosure (eg if rumours about (specific) preparatory steps/actions for a potential takeover bid come into existence and these steps/actions qualify as inside information).

Ireland

The target board may ask the Irish Takeover Panel to impose a put up or shut up deadline on a bidder who has been publicly named, even when the target board is in discussions with that bidder. There is no specified time limit for a put up or shut up period.

Where, in response to a put up or shut up deadline, a bidder states that it will not make an offer for the target, save in limited circumstances (eg with the consent of the target), it will not be permitted to make an offer for the target within 12 months of that statement.

Italy

No put up or shut up rules apply in Italy but, in certain circumstances, disclosure duties apply to inside information

Put up or shut up

Luxembourg

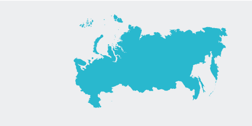
No such rules exist under the Luxembourg Takeover Law.

The Netherlands

A listed company may request the AFM to instruct a person who publishes information that may give the impression that he is considering to prepare a public offer, to make a public announcement within six weeks, either (i) announcing a public offer, or (ii) stating that he has no intention to do so. The AFM acts upon the request if the potential target is adversely affected by the uncertainty whether a public offer will be made.

However, the AFM has some discretionary power in this respect. The person who is instructed to make the 'put up or shut up' announcement must immediately make a public announcement that it received such instruction from the AFM.

If the person announces that they have no intention to make a public offer, they and any persons acting in concert with them are prohibited from announcing or making a public offer for that listed company during the next six months.



Russia

There are no specific rules or requirements in Russian law relating to potential bidders that are considering making an offer. The CBR does not have any prescribed rights to intervene by requiring the potential bidder to clarify its intentions.

In certain circumstances a public announcement on a potential takeover/ merger (which is not progressed) could be considered as "manipulation" of the market and result in administrative or criminal liability of the entity making such an announcement.

Spain

No put up or shut up rules apply in Spain

Switzerland

If a potential bidder publicly states that it is considering making a takeover offer (without formally publishing an offer), the TOB may - after prior consultation with the potential bidder and target - impose a "put up or shut up" obligation requiring the potential bidder to either publicly (i) announce an offer for the target (put up), or (ii) announce that it will not submit an offer or exceed the threshold triggering a mandatory bid within the following six months (shut up).

08 Summary of due diligence market practice

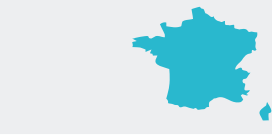
United Kingdom

Market practice varies significantly. Deals are often announced without extensive due diligence, although some access to the target's financial and tax records, key contracts and management diligence is common in recommended bids. Due diligence in hostile situations is typically limited to publicly available information.

The target is not obliged to permit any bidder to undertake due diligence. However, the target will generally be required to disclose to other bona fide potential bidders information which it has previously disclosed to one bidder.

A target often grants a bidder staggered access, gradually increasing the level of information as the deal advances. If the bidder is a competitor, the exchange of market sensitive business information may only be possible between "clean teams".

If due diligence information contains "inside information", that will impact the ability of potential bidders to stakebuild. A confidentiality undertaking is market practice and the target may seek a standstill preventing share purchases.



France

The target's board may only authorise pre-offer due diligence on non-public information to be carried out by a potential bidder if:

- the contemplated transaction is "significant" with respect to size and links to strategic decision-making processes;
- it obtains a confidentiality undertaking regarding data room information, it being specified that the data room may only provide access to inside information if such access is strictly necessary to the bidder for the purpose of the contemplated transaction; and
- the potential bidder demonstrates a serious interest in the acquisition.

On the basis of the principle of fair competition between potential bidders, any information given to a bidder will have to be given equally to another bidder, even if that bidder is less welcome.

Due diligence in hostile scenarios is generally limited to publicly available information.

Germany

Extensive due diligence is very rare in German public takeovers. In general, the target is not required to cooperate with a bidder and deals are usually announced without prior due diligence (other than from publicly available sources). In hostile scenarios, the bidder does not usually receive any non-public information.

For friendly deals, there exists no established market practice regarding the scope of any due diligence provided. The management of the target is generally required to keep the company's business information confidential, and therefore the management must evaluate whether the bid is in the best interest of the target and its stakeholders in order to justify disclosure. Therefore, the target will usually grant a bidder staggered access, (ie it will gradually increase the level of information as the deal advances, often not in written form, but rather in management meetings and only on specific topics). If the bidder is a competitor, the exchange of market sensitive business information may not be possible (or only amongst "clean teams").

Ireland

The target is not obliged to allow the bidder to undertake due diligence, and the extent of due diligence bidders are permitted to undertake varies. In a hostile situation, usually no access to non-public information is given. Where the bidder and target are competitors, "clean teams" are used for the exchange of sensitive information.

A target will normally be required to make information given to one bidder available to any other bona fide bidders who request it.

The disclosure of inside information to a bidder may affect its ability to stakebuild in the target if the information received is price-sensitive.

If information is being shared with a bidder, it is usual for a confidentiality agreement with the target to be in place. The target may seek to include a "standstill" obligation (eg not to acquire shares or stakebuild) on the bidder in this agreement.

Italy

Although not as extensive as on a private deal, due diligence is common in a recommended deal scenario and is typically carried out before a tender offer is launched. The due diligence will have different features depending on whether the bid is hostile or not.

Due diligence in a hostile bid is restricted to information available to the public (eg at the companies registry and public financial statements).

Specific disclosure rules also apply to related party transactions and adherence to codes of conduct.

In the case of a non-hostile bid, the level of due diligence is negotiable, depending on the nature of the proposed takeover, the size of the target and whether the bidder is a competitor or not.

Parties must always be aware of the rules on disclosure of price-sensitive information and insider dealing legislation, as well as the target directors' duties. The signing of non-disclosure agreements is advisable. A target must allow all competing bidders to review material non-public information disclosed to any of them.

Summary of due diligence market practice

Luxembourg

The Luxembourg Takeover Law does not regulate the due diligence process.

Due diligence is common in cases of friendly takeovers. As to the scope of such due diligence, there exists no established market practice. Disclosure of non-publicly available information by the target to the potential bidder appears permitted and it is subject to non-disclosure agreement.

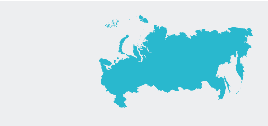
In case of a hostile takeover, no access to non-public information is usually given by the target.

The Netherlands

Market practice varies. Although not as extensive as on a private deal, due diligence is common in a friendly deal scenario. Disclosure of business information is subject to certain restrictions, including a requirement of confidentiality. In addition, such disclosure may prohibit stakebuilding by the bidder pursuant to the rules regarding market abuse.

Hostile bids are announced without prior due diligence, although some access to the target's books may follow later.

The target is not obliged to grant a bidder access to conduct due diligence. If, however, it has allowed another bidder to conduct due diligence, the target board or boards must take into account the obligations imposed by the directors' duties and will most likely allow another bidder similar access, subject to similar conditions.



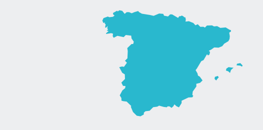
Russia

Market practice varies. In a recommended deal, due diligence is common but not as extensive as on a private deal.

The law does not regulate the due diligence process. The target is not obliged to permit any bidder to undertake due diligence and there is no rule requiring equal treatment of bidders in relation to due diligence.

Normally, a bidder which does carry out due diligence will enter into a non-disclosure/confidentiality agreement with the provider of the due diligence materials.

Due diligence in a hostile scenario is generally limited to publicly available information.



Spain

It is not uncommon for the target to provide additional information to a bidder, generally under a confidentiality agreement which provides that the information will only be used for the purposes of carrying out the takeover bid. However, the same information disclosed to that bidder should also be disclosed to any other potential bidders. Additionally, the CNMV provides guidelines on the disclosure of inside information to third parties.

Due diligence enquiries in a hostile scenario are generally limited to publicly available information.

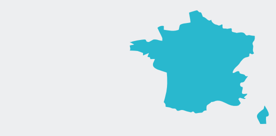
Switzerland

The board of a Swiss target has no statutory duty to enter into discussions about an offer with a potential bidder and/or to agree to a due diligence if it does not consider it to be in the best interests of the target and its stakeholders. In an unsolicited bid, the bidder does not usually receive any non-public information.

However, in a friendly takeover situation, the bidder and the target typically agree on a limited, often staggered, pre-offer due diligence review to be carried out by the bidder. The board of the target should be selective about the information it provides, assessing its confidentiality, potential significance for competitors and price sensitivity. Target directors should also bear in mind the equal treatment rules which require that the same information must be disclosed to any other bidder that may decide to launch a competing offer later in the process.

Before allowing a due diligence review, the target and the potential bidder normally enter into a customary confidentiality (and standstill) agreement.

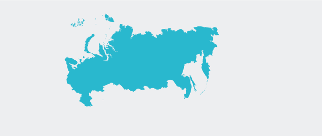
09 Summary of market practice in relation to break fees

United Kingdom	 France	Germany	Ireland	Italy
Legal issues				
Break fees payable by the target are generally prohibited under the Code as part of the rules against deal protection measures. The only permissible break fees are: • subject to Panel consent, an inducement fee paid by a target to one or more "white knights" (ie a rival friendly bidder when the target is subject to a hostile takeover) or to no more than one participant in a formal sale process, in each case provided the aggregate potential amount is de minimis and subject to a cap of no more than 1% of the value of the offer and the inducement fee is payable only upon a third party offer becoming or being declared unconditional; and • reverse break fees (ie a break fee payable by the bidder or its concert party), provided the triggers do not undermine the rules against deal protection (but not if the transaction is a reverse takeover, in which case the restrictions above apply). Where a break fee is permitted, the requirements of the Listing Rules and restrictions on giving financial assistance must be taken into account.	Break fees (or termination fees) paid by the target are not prohibited but are strictly scrutinized by the AMF as they may raise legal and practical concerns. In practice, break fees are paid: • by the target to the bidder, if it decides to recommend a competing offer, or • by the bidder to the target, if the bidder gives up on filing a tender offer (reverse break fees). The amount of the break fees cannot be excessive as they may be considered as an unlawful barrier against a third party's competing offer (contrary to the principle of free interplay of offers and counter-offers). Break fees paid by the target may go against the target's corporate interest (intérêt social) (which would expose the target's board to the risk of liability to the target for mismanagement) directors' duties and corporate interest concerns. Excessive break fees may be reduced by French courts if challenged (as it may be qualified as a penalty clause). The terms of break fees must be disclosed to the AMF and the market.	Break fees are not prohibited under German takeover laws per se, however they raise various complex legal concerns, including in relation to: • the target management's fiduciary duties, including its obligation to maintain neutrality after the announcement of the bid; and • financial assistance. The market has seen some bidders agreeing to a reverse break fee, but this is still a rare mechanism.	A reimbursement break fee pursuant to an agreement approved by the Irish Takeover Panel is exempt from the Irish prohibition on financial assistance, and will not be a Class 1 transaction for the purposes of the Listing Rules of Euronext Dublin.	Break fees given by the target give rise to a number of legal issues, including: • judicial discretion to reduce an excessive break fee; • directors' duties issues (including duty of neutrality of the target's management after the decision to make a bid is made public); and • conflict of interest issues.

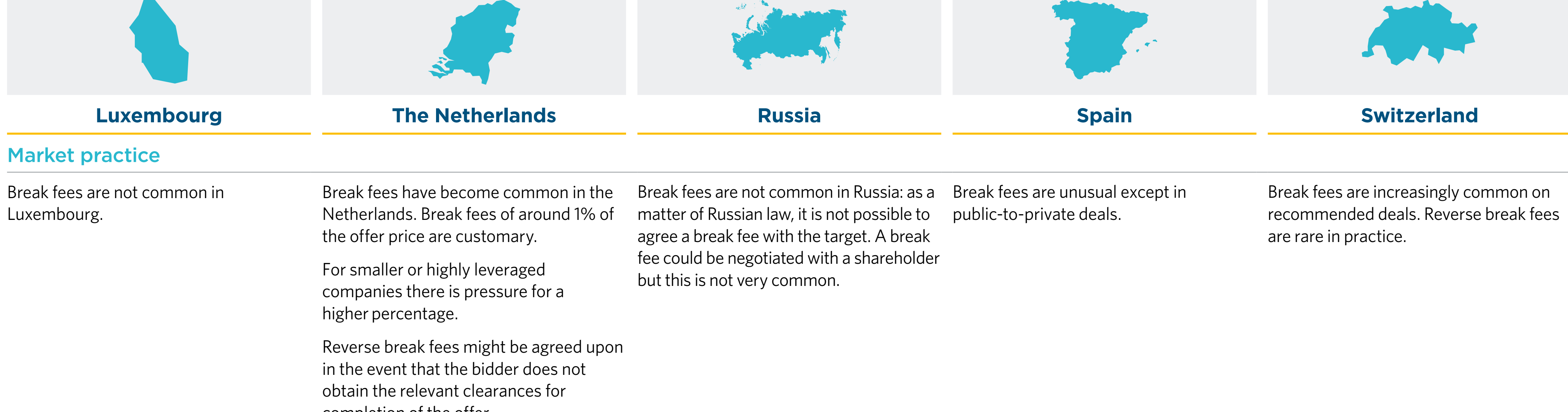
Summary of market practice in relation to break fees

United Kingdom	**France**	**Germany**	**Ireland**	**Italy**
Market practice				
Prior to September 2011, when significant changes were introduced to the Code, break fees and work fees were very common in UK deals. However, given the general prohibition, they are rarely seen. Reverse break fees are increasingly common in circumstances where the bidder's offer carries a high risk of rejection by a regulatory authority or is subject to approval by the bidder's own shareholders.	Break fees paid by the target are rare in public M&A transactions.	Break fees are often asked for as an opening position, but are not (yet) common.	Break fees are very common on recommended deals, but are restricted to reimbursement of specific quantifiable third party costs, subject to an upper limit of 1% of the value of the transaction. The circumstances in which reimbursement becomes payable will be subject to the approval of the Irish Takeover Panel, and the target board and its financial adviser must confirm to the Irish Takeover Panel that they consider the proposed arrangement to be in the best interests of the target shareholders. Reverse break fees payable by the bidder are generally permissible, though still uncommon.	Break fees are not common in Italian public M&A deals.

Summary of market practice in relation to break fees

Luxembourg	**The Netherlands**	 **Russia**	**Spain**	**Switzerland**
Legal issues				
Break fee arrangements are permissible per se. The prospect of entering into a break fee arrangement must be discussed in light of the corporate interest, as a break fee arrangement may advantage or disadvantage the target. The arrangement of break fees is solely a matter of negotiation with the target's management board. Other relevant principles that apply in connection with a break fee arrangement are that the board of the target must act in the interest of the company as a whole and that it must not deprive shareholders of the possibility of a competing bid.	Break fees give rise to a number of issues, including: • terms of break fees are subject to general principles of reasonableness and fairness; • the amount of break fees may be reduced by courts; • terms of break fees must not be in breach of the corporate interest of the target; and • the amount of a break fee should not effectively frustrate a higher competing offer.	There are complex legal issues relating to break fees given by shareholders, including: • judicial discretion to reduce an excessive break fee; • directors' duties; and • a risk that the break fee will be held to be unenforceable (eg on public policy grounds).	The first bidder may agree a break fee with the target, subject to (i) the cap set out below, (ii) the approval of the board of directors in view of a favourable report drafted by the company's financial advisers, and (iii) disclosure of such break fee in the offer document. Pursuant to Royal Decree 1066/2007, break fees may not exceed 1% of the total value of the bid.	Excessive break fees are problematic because they may adversely affect shareholders' freedom of choice to accept or decline the takeover offer and at the same time deter potential competing bidders from launching a competitive bid. According to the TOB's practice, a break fee is therefore only permitted if its amount is proportionate to the transaction value and serves to compensate the bidder for reasonable costs and expenses incurred due to the takeover offer. Although no maximum amount or percentage has been set, the TOB, deciding on a case by case basis, has so far accepted break fees ranging from 0.1% up to 1.99% of the transaction value, depending on circumstances. Reverse break fees are generally permissible since they do not adversely affect the competition among competing bidders. They fall outside the scope of the Swiss takeover rules and are therefore unrestricted under Swiss rules.

Summary of market practice in relation to break fees



	Luxembourg	The Netherlands	Russia	Spain	Switzerland
Market practice	Break fees are not common in Luxembourg.	Break fees have become common in the Netherlands. Break fees of around 1% of the offer price are customary. For smaller or highly leveraged companies there is pressure for a higher percentage. Reverse break fees might be agreed upon in the event that the bidder does not obtain the relevant clearances for completion of the offer.	Break fees are not common in Russia: as a matter of Russian law, it is not possible to agree a break fee with the target. A break fee could be negotiated with a shareholder but this is not very common.	Break fees are unusual except in public-to-private deals.	Break fees are increasingly common on recommended deals. Reverse break fees are rare in practice.

10 Deal protection steps

United Kingdom

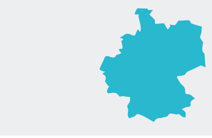
The Code effectively prohibits deal protection measures, except break fees in certain "white knight" situations and formal sale processes (see section 9 above). The Code also prohibits (subject to limited carve-outs) any "offer-related arrangement" between the target and the bidder, or (in each case) any person acting in concert with it, during an offer period or when an offer is reasonably in contemplation. This prohibition means that deal protection provisions such as non-solicitation undertakings and matching or topping rights are generally not permitted. There are carve-outs to the prohibition outlined in the Code eg confidentiality undertakings;

- a non-solicitation agreement covering employees, customers and suppliers;
- commitments to provide information or assistance in obtaining regulatory clearance; and
- irrevocable undertakings and letters of intent in respect of holdings in target shares.

France

Stakebuilding, the purchase of a block prior to the launch of a mandatory offer and contribution undertakings (subject to the conditions mentioned in section 3 above) are common ways of obtaining deal protection.

In friendly deals, the bidder and the target usually enter into a tender offer agreement which can provide for certain no-shop, matching-right and information provisions. However, these agreements are usually subject to the general principles of French securities law such as free interplay of offers and counter-offers, equal treatment and information for all holders of the securities of the persons concerned by the offer, market transparency and integrity, and fairness of transactions and competition. The target's board is solely competent to decide to disregard those general principles.



Germany

Common means of deal protection include stakebuilding, irrevocable undertakings and conditional share purchase agreements with major shareholders (or with holders of bonds convertible into target shares in case of a takeover resulting in a change of control, if any).

Break fees are generally permitted, but not common, and are subject to certain legal issues (see section 9). In friendly deals, the bidder and the target usually enter into a business combination agreement, which can provide for certain no-shop, matching-right and information provisions. However, these are usually subject to a "fiduciary out", (ie a mechanism that allows the management board of the target to disregard these provisions if required by its fiduciary duties). Deal protection measures are restricted by the rules on frustrating action, which are discussed below.

Ireland

Stakebuilding, irrevocable undertakings and break fees are discussed above.

The expenses reimbursement agreement providing for the break fee may also include some exclusivity provisions. These provisions will be subject to the target directors' fiduciary duties, but may give the bidder an opportunity to match or top a competing bid before the recommendation is withdrawn.

If the transaction is structured as a scheme, then it is usual to have an implementation agreement setting out co-operation obligations and the approximate timetable on which the transaction is to progress.

Other deal protection steps are restricted by the rules on frustrating action, which are discussed below.

Certain requirements of the Irish Takeover Rules effectively operate as deal protection mechanisms, (eg financing conditions are not permitted and Irish Takeover Panel consent is required to rely on MAC-type clauses, as explained below).

Italy

Irrevocable undertakings are the usual measures of deal protection.

Deal protection steps

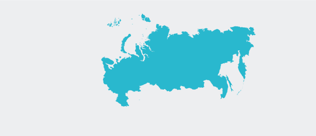
Luxembourg

Irrevocable undertakings and conditional share purchase agreements with major shareholders are common. In the case of a friendly takeover, the bidder and the target may enter into a business combination agreement.

The Netherlands

In addition to stakebuilding, irrevocable undertakings and break fees (discussed above), it is common for the bidder and target to enter into a merger protocol, which sets out in detail the agreement between the parties, including the offer conditions and the practicalities regarding the offer process.

The merger protocol will generally set out the circumstances in which the boards of the target may withdraw a recommendation and how the target will/may act in the event of a competing offer.



Russia

Deal protection measures are not common in Russia.

In addition to stakebuilding and agreements with shareholders, the bidder may seek to protect an offer by incorporating irrevocable undertakings and break fees although, as outlined above, such measures may be found unenforceable.

Spain

Stakebuilding, irrevocable undertakings, break fees (as discussed above) and additional measures such as the conclusion of business combination or similar agreements are all seen in Spain.

Switzerland

Typical means of deal protection are stakebuilding, irrevocable undertakings and break fee arrangements (see sections 3 and 9 above). Except in hostile takeover situations, the bidder and the target regularly enter into a transaction agreement, which usually provides for additional means of deal protection such as no-shop clauses, matching-rights and information provisions, subject, however, to a "fiduciary out".

11 Summary of usual conditions

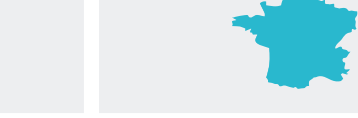
United Kingdom

Offers must not normally be subject to conditions or pre-conditions which depend solely on the subjective judgment of the bidder or the target's directors.

Extensive conditions are nonetheless common.

An offer must be subject to a minimum acceptance condition, (ie the bidder has acquired or agreed to acquire more than 50%, of the target's voting rights). Although this is often set at 90%, it is capable of being reduced by the bidder to a lower level.

Other common conditions include bidder's shareholder approval; court approval (on schemes of arrangement); admission of consideration shares; anti-trust and regulatory approvals; and no material adverse change. If a bidder wishes to invoke a condition, it is generally only allowed to do so (subject to limited exceptions) with the consent of the UK Takeover Panel and if the circumstances are of material significance to the bidder in the context of the offer, which is in practice a very high standard.



France

As a general principle, tender offers filed with the AMF are irrevocable.

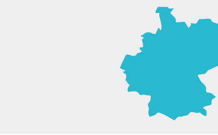
However, an automatic cancellation threshold (seuil de caducité) is mandatory for any voluntary or mandatory takeover. If the bidder has not been able to obtain 50% of the share capital or voting rights by the end of the offer, it becomes null and void. The mandatory threshold cannot be waived by the bidder.

The bidder may make its offer conditional in certain circumstance on other limited conditions:

- a minimum acceptance level in excess of the minimum level of 50%;
- regulatory approvals;
- bidder's shareholders' approval; and
- competing offers and linked offers.

However, an offer cannot be conditional on securing funding (see section 12 below).

Although material adverse change conditions are not acceptable, the bidder may withdraw its offer if the offer is frustrated or the target adopts measures that modify its substance (subject to AMF approval).



Germany

A mandatory offer must be unconditional.

A voluntary offer may be subject to conditions. In general, conditions must not be structured such that their satisfaction is at the sole discretion of the bidder (interpreted narrowly by BaFin).

Common conditions that have been approved by BaFin include:

- anti-trust and FDI clearance and other regulatory approvals;
- company-linked material adverse change – to the extent based on an objective test;
- market-linked material adverse change – usually measured in relation to a relevant stock index or a relevant key interest rate;
- minimum acceptance threshold;
- material transactions and capital increases by the target;
- compliance violations by the target; and
- target's insolvency, liquidation or loss of capital.

Any "new" condition (ie one that has not previously been approved by BaFin) will be subject to in-depth discussions with BaFin.

Ireland

The acceptance condition in offers is often set at 90% for takeover bids for companies which are listed on a regulated market, and at 80% for other companies, to permit squeeze-out of the minority if the bid is successful. This acceptance threshold may be reduced by the bidder, subject to a minimum acceptance condition of more than 50%. If relevant, Irish or European merger clearance conditions must also be included.

Other conditions may include bidder's shareholder approval, admission to trading of consideration shares, regulatory approvals and no material adverse change. However, the prior consent of the Irish Takeover Panel is required before an offer may be made subject to any condition the satisfaction of which depends solely on subjective judgments by the directors of the bidder or which is within their control. Equally, an offer may not be withdrawn because a condition (other than the acceptance condition or anti-trust condition) has not been satisfied unless the circumstances are of material significance to the bidder in the context of the offer and the Irish Takeover Panel is satisfied that, in the prevailing circumstances, it would be reasonable for the bidder to withdraw the offer.

Italy

Conditions are allowed only on voluntary takeover bids and they cannot be invoked solely on the mere will of the bidder.

Common conditions include:

- a minimum acceptance level (often set at 50% plus one share to obtain control or at a higher threshold (eg 66.67% to obtain the right to pass resolutions at an extraordinary general meeting) or 95% plus one share to trigger the squeeze-out right);
- anti-trust and regulatory approvals;
- the absence of events causing a material adverse effect on the offer; and
- the absence of frustrating action by the target.

Summary of usual conditions

Luxembourg

Objective conditions are allowed in the case of voluntary takeover bids only.

Common conditions may include:

- anti-trust clearance and other regulatory approval; and
- a minimum acceptance threshold.

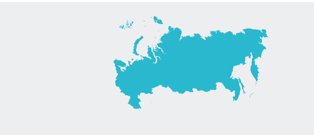
The Netherlands

Extensive conditions are common. Conditions are not permitted to the extent that fulfilment of those conditions is primarily controlled by the bidder (other than by way of waiver), and they must be phrased in such a way that they are clear and, where possible, objectively measurable.

Common conditions include:

- a minimum acceptance level (usually between 70-95%), which often cannot be waived by the bidder without the consent of the target (with respect to a certain percentage);
- no competing offer;
- target shareholders' approval of post-completion restructuring and board changes, subject to the offer being declared unconditional;
- anti-trust and regulatory approval; and
- there not having occurred a material adverse change.

Conditions are not allowed on mandatory bids.



Russia

A voluntary or mandatory public offer must be irrevocable. A voluntary public offer may be made subject to certain conditions being met. Common conditions of a voluntary public offer include: (i) a minimum acceptance level (which may be set at any level);

- regulatory approvals; and
- bidder shareholders' approval.

A mandatory offer cannot be conditional.

Spain

In mandatory takeover bids and in voluntary takeover bids the offer may be subject to the condition of obtaining approval from relevant competition authorities.

In voluntary takeover bids the offer may be subject to additional conditions, provided that fulfilment or non-fulfilment of the relevant conditions can be verified at the end of the acceptance period.

Conditions may include:

- approval of amendments to the
- by-laws or passing of other resolutions by the General Shareholders' Meeting (eg withdrawal of anti-takeover measures) (the "GSM") of the target;
- a minimum acceptance level;
- approval of the bid by the GSM of the bidder; and
- any other condition that may be considered lawful by the CNMV.

Switzerland

Takeover offers must not be subject to conditions precedent which the bidder has decisive control over or which are virtually impossible to satisfy.

For non-mandatory offers, conditions are allowed and may include the following:

- minimum acceptance threshold;
- registration of the bidder in the target's share ledger and election of new board members of the target appointed by the bidder;
- MAC clauses (pursuant to TOB approved requirements)
- approvals and/or clearances by relevant regulatory authorities, including merger control clearances.

Mandatory offers must not be subject to conditions, except for very specific cases such as (i) relevant merger control clearances, or (ii) removal of any transfer restrictions or restriction on the exercise of voting rights provided for in the target company's articles of association.

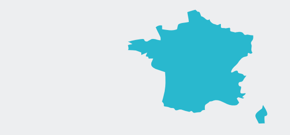
12 Rules relating to financing conditions

United Kingdom

The bidder's financial advisers are required to confirm at the time of the firm intention announcement and the issue of the offer document that sufficient resources are available to satisfy the cash component of the offer. A bidder cannot therefore generally launch an offer without having committed funds in place to cover the cash component of its bid.

This is known as the "cash confirmation" or "certain funds" requirement.

Financing pre-conditions are permitted with Panel consent only in exceptional circumstances (ie completion is likely to be seriously delayed for regulatory reasons and it is unreasonable to expect the bidder to maintain committed financing). Financing pre-conditions are, however, very rare in practice.

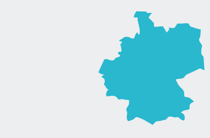


France

As offers must be irrevocable (see section 11 above), public offers cannot be made subject to financing conditions.

The bidder must ensure that it will be able to finance the acquisition of all the targeted shares.

The irrevocability of the offer and the corresponding financial consideration are secured by an underwriting bank ("banque présentatrice") which in practice guarantees the payment of the offer consideration if the bidder fails to do so. The bidder's commitments are guaranteed by the underwriting bank either through a first-demand guarantee issued by the bidder and/or a lending bank or a pledge (gage espèces).



Germany

The bidder may not make its offer subject to any financing conditions. In contrast, the bidder must make sure that it can fulfil all its obligations under the offer (ie in the case of an all cash offer, it must be able to satisfy its payment obligations, assuming a 100% acceptance rate).

In a cash offer, the bidder must engage an independent financial institution to issue a confirmation stating that the bidder has taken all necessary steps to ensure that it will have the financial means to pay the purchase price for the tendered shares when due. A copy of this confirmation will be published with the offer document, must be submitted to BaFin together with the offer document, and must be updated upon approval of the offer document by BaFin. In most cases, the bidder secures its financing prior to announcing that it has taken the decision to launch an offer.

Ireland

Financing conditions are very rare and require prior Irish Takeover Panel consent. Where the offer consideration is wholly or partly cash, the bidder's announcement of a firm intention to make an offer must include confirmation from its financial adviser that resources are available to meet full acceptance of the offer. This is known as the "cash confirmation" or "certain funds" requirement. If this confirmation proves inaccurate, then the Irish Takeover Panel may direct the financial adviser to provide the necessary resources to pay the target shareholders, unless the Irish Takeover Panel is satisfied that that bidder's financial adviser acted responsibly and took all reasonable steps to assure itself that the cash confirmation was accurate.

Italy

Financing conditions are not permitted.

When a bidder notifies the launch of a tender offer, it has to demonstrate that it is able to pay the offer price in cash to the shareholders or adopt all the reasonable measures to ensure that the payment of non-cash consideration is carried out.

Should the offer price consist of a cash component exclusively, the bidder is required to obtain a cash confirmation the day before the publication of the offer document. Should the offer price also consist of financial instruments offered in exchange, a meeting of the corporate body entitled to resolve upon the issuance of the financial instruments has to be called prior to the notification of the tender offer and a resolution must be adopted the day before the publication of the offer document.

Financing arrangements may contain conditions permitting early redemption and/or cancellation of the financing in the event the bidder fails to meet the offer conditions.

Rules relating to financing conditions

Luxembourg

Prior to the announcement of the bid, the bidder must ensure that it can deliver in full any offered cash consideration.

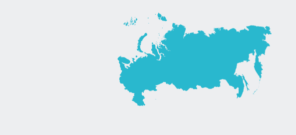
The bidder must also have taken all reasonable measures to secure the implementation of any other type of consideration.

The CSSF, as part of its supervisory function, requires evidence that the bidder has sufficient financial means and coverage to ensure due satisfaction of the offered cash and/or other types of consideration. This evidence may take the form of a letter from a financial institution or lender that the bidder has the requisite cash and/or readily available facilities to satisfy the cash portion of the offered consideration.

The Netherlands

Certain funds are required, meaning that, at the time of the request for approval of the offer document from the AFM, the bidder must be able to satisfy the consideration in cash or have taken reasonable measures to pay any other kind of consideration before the offer is declared unconditional. If the consideration consists of shares of the bidder, the convocation/notice of the shareholders meeting of the bidder which is to resolve upon the issuance of such shares is sufficient to satisfy the certain funds requirement.

No external funding commitment is required and it is still unclear which tests should be met by a bidder to establish that it is able to satisfy the consideration in cash. Ultimately it is the responsibility of the bidder but the AFM may push for supporting details to be announced.



Russia

Public offers cannot be made subject to financing conditions.

The bidder's obligation to pay for the shares must be secured by a bank guarantee. The bank guarantee cannot be withdrawn and must be effective for at least six months after the deadline for payment of the consideration.

Spain

The financing must be in place by the time of the authorisation request to the CNMV or at the latest within 7 business days of the date of the request.

Financing arrangements may contain conditions permitting early redemption and/or cancellation of the financing in the event that the offer does meet the conditions subject to which it was launched.

Switzerland

Under the Swiss takeover rules, financing conditions are not permissible.

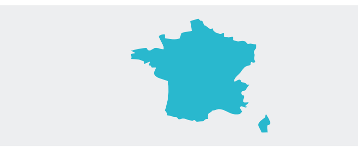
The offer prospectus must contain the essential details of the financing of the offer, as well as a confirmation from the TOB's review body that the bidder has taken the necessary measures to ensure that the required funds are available on the settlement date. The review body must therefore make sure that any debt financing arrangements do not contain any substantive conditions other than the ones set out in the offer prospectus.

13 Would a bidder who acquires 50% ordinarily expect to obtain control of the target?

United Kingdom

Typically a bidder who obtains acceptances of a takeover offer in respect of 50% of the target shares would expect to obtain board control, assuming no other material conditions are outstanding. Another important "control" threshold is 75% which enables the bidder to pass special resolutions and (in respect of premium listed companies without a controlling shareholder) to delist the target. Therefore bidders typically reserve the right to reduce the minimum acceptance condition to 50% plus one share, but may not do so if prevented by their funding arrangements or if there is a risk that the squeeze-out threshold (90%) or potentially the delisting threshold (75%) will not be reached.

A takeover undertaken by way of scheme of arrangement requires the support of a majority in number of shareholders holding 75% in value of the shares voted (in person or by proxy) in relation to the scheme at a court convened shareholder meeting. If that vote is obtained, it binds all the target shareholders and so secures the bidder 100% control.



France

A bidder acquiring 50% of the share capital would expect to obtain control of the target. However, a bidder who obtains acceptances in respect of 50% of the target shares will not necessarily succeed in acquiring full control of the target. To be able to exercise full control (and be in a position to squeeze-out minority shareholders), the bidder must obtain control of a 90% threshold (ie the minority shareholders do not represent more than 10% of the share capital and voting rights of the target) although defacto control may be obtained with a lower majority.

Bidders who seek to obtain control over all general meetings of a French target may impose a 66.67% acceptance threshold due to the fact that a two-thirds majority is required to take major corporate decisions in extraordinary general meetings (eg a merger). However, in practice, bidders may obtain control with a smaller shareholding due to low attendance of general meetings in France and to majority calculation rules.

Germany

In general, only a 75% majority will allow the bidder to take full control of/to fully integrate the target (often by means of a "control agreement" (Beherrschungsvertrag)). As a consequence, bidders often make their offer subject to a 75% acceptance threshold.

However, even with only a 50% stake after the offer, the bidder will over time be able to replace members of the supervisory board and indirectly members of the management board and thus achieve some factual control over the target. In this situation, the bidder can over time increase its stake in the target through market purchases to 75% in order to achieve full control. In practice, a bidder will often not need 75% of the issued share capital in order to achieve the necessary 75% voting power in a shareholders' meeting as usually the attendance rate is well below 100%.

Reaching the squeeze-out threshold of 95% in a takeover situation is usually remote.

Ireland

Assuming all other conditions to the offer are satisfied or waived, a bidder who acquires more than 50% of the target as a result of an offer can normally use statutory procedures to remove and appoint directors to the target board and, as a result, can exert a significant degree of influence over the target. However, it is important to consider any restrictions on the exercise of control that may be found in applicable listing rules or other regulations.

In order to squeeze-out minority shareholders and make the target a wholly-owned subsidiary (which may be necessary to satisfy the conditions to the bidder's financing), the bidder must obtain 90% acceptances (for a takeover bid for an Irish company listed on a regulated market such as Euronext Dublin) or 80% acceptances (for an Irish company other than one listed on a regulated market).

If the transaction is structured as a scheme of arrangement, the bidder will obtain 100% control.

Italy

A bidder who acquires 50% plus one of the voting rights of the target would expect to obtain control of the target through the right to appoint the members of the board of directors, subject to different by-laws provisions. In addition, if the bidder acquires 66.7% of the voting rights of the target, it will be able to resolve upon, inter alia, modification of the articles of association, dissolution and liquidation of the target without the need of the favourable vote of the other shareholders. (See also section 16 below.)

Would a bidder who acquires 50% ordinarily expect to obtain control of the target?

Luxembourg

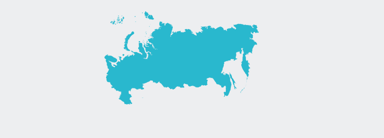
A bidder who obtains acceptance of a takeover offer in respect of 50% of the target shares to which voting rights are attached would usually expect to obtain control over the appointment and removal of the members of the board of directors. The company's articles of association may impose more stringent majority requirements.

Another important percentage that enables a shareholder to have full control and notably to pass all extraordinary shareholders' resolutions (eg amendment of the articles of association) is 2/3 majority. As such majority is always calculated on the number of votes present or represented at the relevant extraordinary shareholders' meeting in practice to secure such majority less than 2/3 of the total securities to which voting rights are attached will suffice.

The Netherlands

A bidder who obtains acceptances of a takeover offer in respect of 50% of the target shares would ordinarily expect to obtain a high level of control over the target, depending on any voting thresholds included in the articles of association of the target. Majority shareholders are to a certain extent required to take into account the reasonable interests of other shareholders. The merger protocol in recommended offers will generally provide for some measure of minority protection. For a bidder to implement a full integration of the target (including delisting, squeezing-out minority shareholders and integration in Dutch tax structure), a 95% majority is required.

A smaller majority could possibly be sufficient if the bidder squeezes out the minority shareholders through a legal merger or other means, which is not feasible under all circumstances. (See also section 16 below.)



Russia

A bidder who obtains acceptances in respect of 50% plus one share of the target's voting shares would expect to obtain control, at least over the majority of the main decisions of the company. However, the squeeze-out threshold is 95%. If this threshold is not reached the minority shareholders are able to refuse to sell and hold out for a better price.

Spain

Ordinarily a bidder would achieve control by acquiring 50% plus one share of the target voting shares. However, anti-takeover mechanisms may be in place such as a cap in the by-laws in excess of which the voting rights of a shareholder may not be exercised. Removal of such caps would generally be a condition to the offer (as explained above).

Switzerland

Whether a bidder obtains effective control over a target must be analysed on a case-by-case basis. Legally and factually, however, a bidder who obtains control over more than 50% of the voting rights of the target will ordinarily expect to obtain control of the target. Another important threshold for obtaining control is 66.67% of the voting rights, which gives the bidder control of certain matters which are subject to a mandatory 66.67% approval threshold.

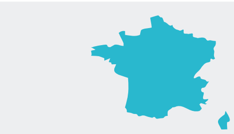
14 Frustrating actions

United Kingdom

The ability of the target board to take frustrating action is strictly curtailed by the Code and is also subject to the directors' fiduciary duties. With certain limited exceptions, as soon as the target board believes an offer is imminent (and even before the formal offer period) the Code requires any potentially frustrating action (including, for example, major corporate transactions, contracts outside the ordinary course of business, share issues etc.) to be approved by either the bidder or the target's shareholders in a general meeting.

In addition, UK directors' duties typically mean that poison pill or other arrangements to prevent a takeover are not able to be implemented in advance of a takeover.

The board is not prevented from seeking higher offers.



France

Many defensive mechanisms may be implemented by the target (either prior to, or subsequent to, the filing of a hostile offer) to frustrate the offer.

After the date of the filing of the offer with the AMF, the target's board is authorised to take any measure which could frustrate a bid without the need to obtain the prior approval of the shareholders, provided that such measures: (i) do not fall within the exclusive authority of the shareholders' general meeting, and (ii) are not contrary to the corporate interest of the target.

However, the articles of association may expressly prohibit the target board from taking any measure which could frustrate a bid unless approved by the shareholders. In practice, financial authorisations granted by the shareholders usually contain a clause prohibiting implementation during a takeover.

Post-filing of the bid, defences include: the issuance of shares to a preferred bidder; the sale of a material asset of the target company ("crown jewels"); repurchase of shares; the seeking of another potential bidder to make a competing offer for the target ("white knight"); the allocation of defensive warrants ("poison pills").

Germany

Under the German takeover laws, the management board's arsenal of actions to frustrate a takeover is rather limited. In general, the management board may only take such actions that a prudent and conscientious business person would have taken in the absence of the bid.

Exempt from this rule are:

- seeking a competing bidder ("white knight");
- taking actions approved by the supervisory board; and
- taking specific actions previously authorised by the shareholders' meeting with a 75% supermajority vote of the capital present (implementing such measures requires the consent of the supervisory board; the authorisation by the shareholders' meeting is only valid for 18 months).

In practice, the ability of the management board to take frustrating action is quite limited.

Ireland

The ability of the target's board to take frustrating action is limited after an approach has been made or when the directors have reason to believe one is imminent (the "restricted period").

Normally, subject to very limited exceptions, any action that may result in frustration of an offer or possible offer (including share issues, acquisitions, disposals, contracts outside the ordinary course of business) will be required to be approved by the target shareholders in general meeting before it can be implemented during the restricted period.

Frustrating action taken outside the restricted period is not regulated by the Irish Takeover Rules, but remains subject to the fiduciary duties and other obligations of the directors of Irish companies (eg to act in the best interests of target shareholders as a whole).

Italy

Once a takeover bid is launched, unless duly authorised by a shareholder resolution, Italian listed companies must abstain from any act or transaction that might result in frustration of the bid.

It is specifically provided that a mere search for other bidders shall not be considered an act or transaction frustrating the bid.

Authorisation shall also be required for the implementation of any decision taken prior to the announcement of the offer: (i) which has not yet been implemented, either wholly or in part; (ii) which does not form part of normal company procedures; and (iii) the implementation of which could frustrate the bid.

Nevertheless, the by-laws of an Italian listed company may opt out, in whole or in part, from the above provisions.

Frustrating actions

Luxembourg

The Luxembourg Takeover Law allows for an opt-out from the passivity regime introduced by the Takeover Directive.

Hence, defence measures against takeover bids may in principle be put in place by the target in accordance with certain general principles set out in the Takeover Directive.

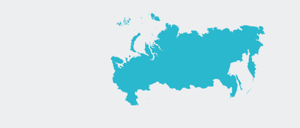
Nevertheless, the general meeting of the shareholders of the target may decide to opt-in to the passivity regime in which case certain defensive measures may no longer be used without prior approval of the general meeting of the shareholders.

The Netherlands

Dutch law contains an opt-out from the general prohibition on frustrating action contained in the Takeover Directive. The target board is generally permitted to undertake frustrating action, subject only to the duty of the directors to act in the best interests of the company and its stakeholders.

Pursuant to case law, anti-takeover measures may generally only be maintained for a reasonable period of time.

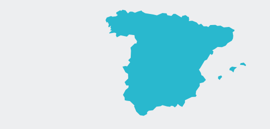
A common anti-takeover measure is the granting of a call option to a target friendly anti-takeover foundation. In the event of a hostile bid, the foundation can exercise the call option and the target will issue special preference shares to the foundation, thereby diluting the potential equity interest that a hostile bidder may acquire. This anti-takeover measure must have been put in place prior to any hostile bid (typically upon the listing of the company). Once it has been set-up the anti-takeover measure remains dormant and it can generally be used at short notice in the event a hostile bid is made.



Russia

The ability of the board to take frustrating action is limited. The JSC Law requires most types of potentially frustrating actions (eg increase of the company's charter capital, placement of securities convertible into shares, acquisition by the company of its own shares) to be approved by the shareholders in general meeting, although certain residual matters may be within the competence of the board.

The board may (but is not obliged to) solicit other offers. The target must deliver a copy of any other offers to shareholders and to the original bidder.



Spain

From the date of announcement of a takeover bid and until its result is published, the board of directors (as well as any other management bodies) of the target company must obtain the GSM's approval in order to take any action which could prevent the success of the takeover bid. Such approval is not necessary prior to seeking competing bids. In the event that the bid is made by a company not subject to this approval mechanism in its jurisdiction, this obligation would not apply, if agreed by the GSM in the 18 months prior to the announcement of the bid.

Switzerland

Prior to the announcement of a takeover offer, a potential target can take defensive measures against an unsolicited takeover attempt (eg by implementing share transfer restrictions, voting restrictions, majority requirements, etc.). From the moment the offer is published until the result is announced, the ability of the target's board to take frustrating action is limited. The board must not enter into any legal transactions which would have the effect of significantly altering the assets or liabilities of the target company. Decisions taken by the GSM are not subject to this restriction and may be implemented irrespective of whether they were adopted before or after publication of the offer. The target must also inform the TOB before taking any defensive measures.

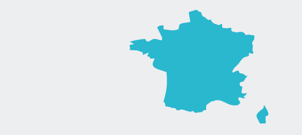
15 When can the bid be withdrawn?

United Kingdom

An offer will generally be open for 60 days unless the bidder sets an earlier unconditional date, or publishes an acceleration statement to bring forward the unconditional date. Alternatively it may issue an acceptance condition invocation notice to try and invoke the acceptance condition and lapse the offer early (which requires 14 days' notice to target shareholders). The bidder must also specify a long-stop date for the offer.

On a takeover by way of a scheme of arrangement, the shareholder meeting to approve the scheme must be at least 21 days after the posting of the scheme circular and the offer will lapse if the scheme is not approved at that meeting by a majority in number of the target shareholders holding 75% in value of the shares that are the subject of the scheme. The parties may agree conditions to the scheme which specify long stop dates by which shareholder meetings are to occur, the court hearing to sanction the scheme is to be held and the scheme is to become effective.

Most other conditions (irrespective of transaction structure) may only be invoked if the effect of them not being satisfied can be shown to the satisfaction of the Panel to be sufficiently material (see section 11).



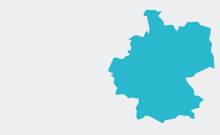
France

An offer may be withdrawn:

- except under specific cases authorised by the AMF, if the minimum voluntary acceptance level is not reached;
- subject to the prior approval of the AMF, (a) if the offer becomes irrelevant (eg where competing bidders finally decide to file a joint tender offer), (b) if the target takes specific actions during the offer period which alter its substance or (c) if the target takes measures which require the bidder to improve its offer;
- within five trading days from the publication of the timetable of a competing offer by the AMF.

The offer will lapse if the conditions precedent are not met (see section 11) eg:

- if the mandatory 50% acceptance threshold is not met;
- if the competition authorisation is not obtained during Phase I, the offer lapses if it moves to Phase II;
- if the offer is conditional on obtaining the approval of the issuance of new securities by the bidder's shareholders.



Germany

The bidder is not entitled to any withdrawal rights. Note that in case a condition fails to be fulfilled (and this condition has not been waived prior to such failure), (eg a material adverse change event occurs), the bid automatically lapses.

Ireland

An offer must initially be open for at least 21 days after the posting of the offer document, but can be withdrawn on any closing date when the acceptance condition is not satisfied. As discussed in response to section 10, conditions (other than the acceptance and anti-trust conditions) may only be invoked where the circumstances are of material significance in the context of the offer and the Irish Takeover Panel is satisfied that, in the prevailing circumstances, it would be reasonable for the bidder to withdraw the offer.

A scheme of arrangement can be withdrawn if it is not approved by the requisite majority of target shareholders (see section 13).

Italy

A bid cannot be withdrawn because offers are irrevocable under Italian law. Any clause stating the contrary is null and void.

However, a voluntary takeover bid may be subject to the usual conditions precedent (see section 13).

When can the bid be withdrawn?

Luxembourg

The takeover bid must, in principle, be pursued by the bidder until completion.

As from the date of publication of the offer document, the bid may be revoked only in one of the following cases:

- a competing bid is made;
- the administrative authorisation required for the acquisition of securities that are subject to the takeover bid is not granted (eg anti-trust clearance);
- independently from the bidder's will, a condition to which the bid has been subject has not been met; or
- other exceptional circumstances arose that preclude realisation of the bid, for reasons independent from the bidder's will, subject to the authorisation of the CSSF.

The Netherlands

An offer must be open for at least eight weeks, but not longer than ten weeks. The offer period commences on the first business day after the date on which the offer document has been made available. Once a public offer has been launched it cannot be withdrawn. A bidder may however decide not to declare the offer unconditional and withdraw the offer in the event that not all of the offer conditions have been fulfilled or waived. If it is determined that an offer condition will not be fulfilled, the bidder must make a public announcement to that effect and state in the announcement whether or not he will invoke the condition.

Prior to the offer being launched, a bidder may still decide not to pursue the offer even after having received the AFM's approval of the offering memorandum.

Russia

A bidder is not entitled to withdraw an offer unless it has received an order from the CBR to bring the offer in line with the requirements of law. However, a voluntary takeover offer may be subject to the usual conditions (see section 13).

Spain

For both mandatory and voluntary takeover bids, the bidder may withdraw its offer in the following events:

- if the takeover bid has been launched subject to the condition of obtaining approval from competition authorities and this approval is not obtained; or
- when for exceptional reasons beyond the bidder's control the bid is unviable or cannot be fulfilled, provided that prior approval is obtained from the CNMV.

Mandatory takeover bids may also be withdrawn if at the end of the procedure for submitting competing bids, an unconditional competing takeover bid has been made on better terms than the initial bid.

Voluntary takeover bids may also be withdrawn when (i) a competing offer is authorised, or (ii) subject to consent from the CNMV, when the GSM of the target passes a resolution that frustrates the offer.

Switzerland

An offer is binding from its launch (whether by way of pre-announcement or direct publication of the offer prospectus). The bidder is not entitled to any withdrawal rights. The bid automatically lapses if not all of the offer conditions have been satisfied or waived after the lapse of the offer period or the settlement date (subject to limited exceptions).

16 Summary of compulsory purchase/squeeze-out rules

United Kingdom	France	Germany	Ireland	Italy
Squeeze-out following a takeover offer				
A bidder may squeeze-out minority shareholders after acquiring 90% of the shares "to which the offer relates", which is a term defined by the Companies Act 2006 (and which provides, amongst other things, that shares which the bidder holds prior to the offer being made cannot be counted towards achieving the 90% threshold). A takeover conducted by way of a scheme of arrangement will bind all of the target shareholders if a majority in number holding 75% in value of the target shares vote to approve the scheme.	A bidder may squeeze-out minority shareholders within three months after completion of any type of takeover offer if the remaining securities not held by the bidder (and persons acting in concert with the bidder) do not represent more than 10% of the share capital and voting rights of the target and provided that such bidder declared its intention to exercise this right in the offer document. The minority shareholders are entitled to a fair payment in cash (or with a cash option if a pure exchange offer was previously filed) for their shares. This payment shall be no less than the offer price.	Under the special squeeze-out rules in the Securities Acquisition and Takeover Act, a bidder may, during the first three months following the expiry of the acceptance period, apply to Court for the transfer of the remaining shares carrying voting rights if the bidder holds at least 95% of the share capital carrying voting rights. The bidder may further apply to Court for the transfer of remaining shares not carrying voting rights (ie preference shares) if it owns 95% of the entire share capital. In each case, no shareholders' resolution is required. In particular due to the high threshold and the short three-month period, the special squeeze-out rules do not have much relevance in practice.	A bidder may squeeze-out minority shareholders of: • an Irish company listed on a regulated market (such as Euronext Dublin) after acquiring 90% of the shares to which a takeover bid relates; and • any other Irish company after acquiring 80% of the shares to which the offer relates.	A bidder that, in the context of a bid launched to obtain 100% of the target, has acquired 95% of the target's capital represented by securities with voting rights, may squeeze-out the remaining securities, within three months from the close of the offer, provided such person declared his intention to exercise this right in the offer document.

Summary of compulsory purchase/squeeze-out rules

United Kingdom	France	Germany	Ireland	Italy
Squeeze-out generally				
There is no general ability to conduct compulsory purchases in the absence of an offer.	A buyout offer initiated by the majority shareholder (*offre publique de retrait*) may be carried out at any time by the majority shareholder (or shareholders acting in concert) holding 90% of the share capital or voting rights of the target provided a prospectus has been submitted to the AMF and the bidder has obtained a fairness opinion regarding the purchase price. The minority shareholders remain free to tender their shares to the buyout offer or not.	Under the general squeeze-out rules set out in the Stock Corporation Act, shareholders holding at least 95% of the share capital of a company may at any time propose at a general meeting to resolve to squeeze-out the remaining minority shareholders. The compensation to be paid to the remaining shareholders will be determined on the basis of a valuation report for the company prepared by an independent auditor (to be appointed by a competent court). Further, under the Reorganization Act, it is possible to squeeze-out the minority shareholders of a company if its parent directly holds 90% of the shares and the company is merged with and into its parent. Both the parent and the company must be a stock corporation, a partnership limited by shares (KGaA) or a Societas Europaea (SE).	A squeeze-out may be undertaken where any scheme, contract or offer involving the acquisition of the beneficial ownership of all of the shares in an Irish company has become binding or been approved or accepted by shareholders holding 80% in value of the shares affected. This does not apply to a takeover bid for an Irish company listed on a regulated market (such as Euronext Dublin) where the squeeze-out threshold is, as discussed above, 90%, but can be relied upon in transactions that are not regulated by the Irish Takeover Panel.	There is no general ability to conduct compulsory purchases in the absence of an offer.

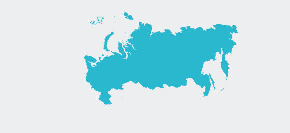
Summary of compulsory purchase/squeeze-out rules

United Kingdom	France	Germany	Ireland	Italy
Forced acquisitions				
Shareholders cannot generally force majority shareholder to acquire their shares, absent unfairly prejudicial conduct and then only in certain circumstances (eg as one of the remedies available to the Court). However, a shareholder who has not accepted a takeover offer may force the bidder who has acquired 90% of the voting shares of the company to acquire his shares.	A minority shareholder may request the AMF to force the majority shareholder (or shareholders acting in concert) holding more than 90% of the share capital or the voting rights of an issuer to file a buyout offer (*offre publique de retrait*).	If the bidder meets the prerequisites of a special squeeze-out under the German Takeover Act (see above), those shareholders of the target that have not accepted the offer during the acceptance period are entitled to accept the offer on the same terms for a further period of three month after expiry of the acceptance period.	In the absence of oppressive conduct, a minority shareholder cannot normally require a majority shareholder to acquire their shares. However, where the squeeze-out thresholds discussed above have been achieved, non-accepting shareholders may require the bidder to acquire their shares.	A bidder who, after a tender offer, holds at least 95% of the target voting shares can be required by the remaining shareholders to buy their shares. A bidder who holds more than 90% of a listed target's voting shares may be required by the remaining shareholders to buy their shares unless, within 90 days, it restores a free float sufficient to ensure regular trading performance. In practice some bidders have reduced their holding below 90% so as to avoid triggering the sell-out rule.

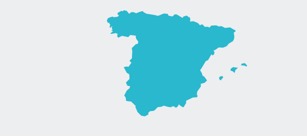
Summary of compulsory purchase/squeeze-out rules

Luxembourg

The Netherlands



Russia



Spain

Switzerland

Squeeze-out following a takeover offer

Luxembourg

When as a result of an offer (mandatory or voluntary) addressed to all of the holders of voting securities of the target, the bidder holds voting securities representing not less than 95% of the share capital that carry voting rights to which the offer relates and 95% of the voting rights, the bidder may require the holders of the remaining voting securities to sell those securities to the bidder (the "Squeeze-Out Following a Takeover").

The price offered for such securities must be a "fair price". As to the fair price, the Luxembourg Takeover Law provides for the following two presumptions:

- in case of a mandatory bid, the price offered in the initial bid will be legally deemed to be fair;
- in case of a voluntary bid, the consideration offered in the initial bid shall be presumed to be fair if, through acceptance of the initial bid, the bidder has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

The Netherlands

A bidder may squeeze-out a minority after acquiring 95% of the target's shares by initiating proceedings against the minority shareholders for the transfer of their shares before the Enterprise Chamber of the Amsterdam Court of Appeal. In the event the share capital of the target is divided into different classes of shares, such proceedings may only be initiated with respect to the share class(es) of which the bidder holds 95% or more.

The minority shareholders are entitled to a fair payment in cash for their shares. This payment is typically determined by the Enterprise Chamber to be the (cash equivalent of the) offer price. In addition, interest may be payable.

If the 95% threshold is not met, the bidder may, depending on the facts and circumstances of the transaction, decide to effect a legal merger (or other post-completion structuring) effectively squeezing out the minority shareholders of the target provided that certain transparency requirements and safeguards apply to such post-completion structuring.

Russia

A bidder which exceeds the 95% threshold as a result of a voluntary or mandatory offer in which such bidder acquired more than 10% of the shares is entitled to purchase the remaining voting shares in the company and securities convertible into shares at a fair market price as determined by an independent valuer (and such price should not be lower than the acquisition price under the voluntary or mandatory bid). The squeeze-out may also be effected by the sole shareholder of a public company that has merged with another entity into a new public company or into which another entity has merger by way of accession, provided that such previously sole shareholder has become a 95%-shareholder following the merger. However the procedure requires making a voluntary offer and acquiring more than 50% of shares belonging to the minority shareholders as a result of it.

There is no right to squeeze-out where the 95% threshold has been exceeded other than pursuant to a voluntary or mandatory offer.

Spain

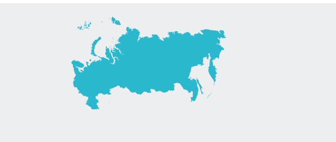
In order to exercise squeeze-out rights at an equitable price following the takeover bid (i) the bidder must hold at least 90% of the voting share capital, and (ii) the takeover bid must have been accepted by securities representing at least 90% of the voting rights to which it was addressed. For these purposes, the consideration per share offered in the takeover bid will be deemed an equitable price.

Switzerland

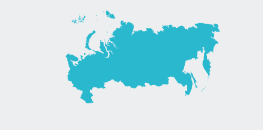
If the bidder holds more than 98% of the voting rights of the target following a takeover offer, it may, within three months after the end of the additional acceptance period (see section 16 below), launch a Court squeeze-out procedure.

Alternatively, after acquiring 90% of the shares, bidders may also squeeze-out minority shareholders by way of squeeze-out merger under the Swiss Merger Act.

Summary of compulsory purchase/squeeze-out rules

Luxembourg	The Netherlands	 Russia	Spain	Switzerland
Squeeze-out generally				
The Luxembourg law of 21 July 2012 on mandatory squeeze-out and sell-out (the "Luxembourg Squeeze-Out and Sell-Out Law") provides that if any individual or legal entity, acting alone or in concert with another, becomes the owner, directly or indirectly, of a number of shares or other voting securities representing at least 95% of the voting share capital and 95% of the voting rights of a company falling within the scope of the Luxembourg Squeeze-Out and Sell-Out Law such owner may require the holders of the remaining shares or other voting securities to sell those remaining securities (the "Mandatory Squeeze-Out", together with the Squeeze-Out Following a Takeover collectively referred to as the "Mandatory Squeeze-Out Procedures"). The Mandatory Squeeze-Out must be exercised at a fair price according to objective and adequate methods applying to asset disposals, which must be supported by a valuation report prepared by an independent expert.	Same rule as above – subject to certain conditions any shareholder holding 95% or more of the shares can squeeze-out a minority through a special court procedure before the Enterprise Chamber of the Amsterdam Court of Appeal. The general squeeze-out right and the squeeze-out right following a public offer are supplementary to each other (ie a bidder who acquired 95% or more of a specific class of shares but less than 95% of the entire share capital may first invoke the "specific" squeeze-out right following the public offer to acquire all the shares of the relevant class, and, if the bidder as a result thereof owns 95% of the entire share capital, subsequently invoke the general squeeze-out right to acquire the remaining shares).	There is no general ability to conduct compulsory purchases in the absence of an offer.	There is no general ability to conduct compulsory purchases in the absence of an offer.	If the bidder has acquired 90% or more of the voting rights of the target, it may consider initiating a squeeze-out merger under the Swiss Merger Act. This allows the bidder to force out the remaining minority shareholders in exchange for adequate cash consideration (which is often, but not necessarily, identical to the offer price).

Summary of compulsory purchase/squeeze-out rules

Luxembourg	**The Netherlands**	 **Russia**	**Spain**	**Switzerland**
Forced acquisitions				
If the conditions of any of the Mandatory Squeeze-Out Procedures described above are met, shareholders who have not accepted a takeover offer or the remaining shareholders, as applicable, may be forced by the majority shareholder to sell their remaining shares. When as a result of an offer (mandatory or voluntary) addressed to all holders of voting securities of the target, the bidder (and any person acting in concert with the bidder) holds voting securities carrying more than 90% of the voting rights, the remaining security holders may require that the bidder purchases the remaining voting securities. Moreover, if any individual or legal entity, alone or in concert with another, becomes the owner, directly or indirectly, of shares or other voting securities representing at least 95% of the voting share capital and 95% of the voting rights of a company falling within the scope of the Luxembourg Squeeze-Out and Sell-Out Law, the remaining holders may require the owner to purchase those remaining shares or other voting securities (the "Mandatory Sell-Out").	A shareholder who has not accepted a takeover offer may force a bidder who has acquired at least 95% of the shares of the target to acquire his shares by initiating a special court procedure before the Enterprise Chamber of the Amsterdam Court of Appeal.	A bidder who, pursuant to a voluntary or mandatory offer, acquires more than 95% in aggregate of the company's voting shares can be required by the remaining stockholders to buy their shares and securities convertible into shares. The acquisition price may not be lower than the average traded price (if the shares have been traded for the six preceding months) or a fair market price (if the shares have not been traded for the six preceding months) to be determined by an independent appraiser. There is no right for a minority to force an acquisition of their shares where the 95% threshold has been exceeded other than pursuant to a voluntary or mandatory offer.	Following a takeover bid, shareholders still holding shares of the target company are entitled to sell their shares (sell-out right) to the bidder at an equitable price provided that (i) the bidder holds at least 90% of the voting share capital, and (ii) the takeover bid has been accepted by securities representing at least 90% of the voting rights to which it was addressed. For these purposes the consideration per share offered in the takeover bid will be deemed an equitable price.	Under Swiss statutory law, minority shareholders are not entitled to require a majority shareholder to acquire their shares (absent of bidder's requirements under a mandatory offer), although a successful bidder must allow minority shareholders ten days to accept retrospectively after the end of the offer period.

17 Delisting requirements

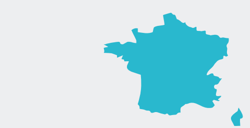
United Kingdom

Delisting requirements depend on the market on which the shares are traded. Delisting from the premium segment of London's Main Market normally requires shareholders to pass a special (75%) resolution in favour of delisting, but this is normally unnecessary either (i) where a bidder has acquired 75% of the shares in a company as a result of a takeover offer and has stated its intention to delist in the offer document or (ii) where a scheme of arrangement is used.

On a contractual takeover offer, if the bidder has a stake of more than 50% in the target before it announces its offer, it must obtain acceptances or acquire shares from independent shareholders that represent a majority of the votes held by independent shareholders, in addition to reaching the 75% acceptances threshold discussed above, in order to be able to delist the target.

In addition, the target must apply for delisting from the Official List maintained by the UK Listing Authority.

The position for companies whose shares are traded on AIM is similar, except the bidder only needs to acquire 75% unconditional acceptances to avoid the need for a special resolution.

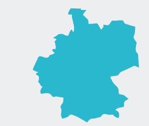


France

In addition to automatic delisting following a squeeze-out process, the delisting of the target's shares may be decided by Euronext Paris upon: (i) the target's written request, (ii) the AMF's request (as a sanction), or Euronext Paris' own initiative.

In practice, the delisting at the target's request is unusual for technical reasons (the delisting criteria are hardly ever met) and for practical reasons (such delisting does not imply the squeeze-out of the minority shareholders, so that it may result in an uncomfortable situation where the majority shareholder would have to deal with a number of remaining unknown minority shareholders in the target).

The offer document must state whether or not the bidder intends to carry out the delisting of the target shares.



Germany

For a delisting of the target shares from a regulated market (eg the Prime Standard of the Frankfurt Stock Exchange) major shareholders must make a delisting offer for the acquisition of all issued shares so that all other shareholders can sell their shares to the major shareholder before the shares are delisted.

The delisting offer must be made at a reasonable price. The delisting offer price may generally not fall below the six month volume weighted average share price of the shares prior to the launch of the voluntary/mandatory takeover offer. The delisting offer may not be made subject to offer conditions.

There may be other delisting structures ("cold delistings") available including a merger of the target into a private company which requires, among other things, a special resolution (at least by a 75% majority) by the shareholders of the merging entities and a compensation offer to the minority shareholders. Note that, instead of delisting, bidders after a takeover often "downlist" the target, (ie shift the admission from trading on one segment of the regulated market to another segment). This downlisting reduces the target's reporting obligations.

Ireland

Delisting normally requires a special (75%) resolution in favour to be passed, but this is usually unnecessary where a bidder has acquired 75% of the shares in a company as a result of a takeover offer, and has stated its intention to delist in the offer document.

As noted elsewhere, where a bidder is a "controlling shareholder" (ie exercises or controls, together with any concert parties, 30% of the voting rights in target), then the threshold to de-list is higher, requiring acceptances/ acquisitions of shares from independent shareholders that represent a majority of the votes held by independent shareholders, in addition to reaching the general 75% acceptances threshold, in order to be able to delist the target.

Italy

Where minority shareholders have the right to require the bidder to acquire their shares (see section 16), the target shares are delisted on the trading day following the last day for the payment of the consideration, unless the bidder has declared that it intends to restore the free float.

In the event the bidder is entitled to squeeze-out a minority (see section 16), the target shares are suspended and/or delisted taking into account the timetable for the exercise of the squeeze-out right. Borsa Italiana (the entity responsible for the organisation and management of the Italian stock exchange) notifies the market of the date of the revocation in advance.

Delisting may also be obtained in the event that the target, a listed company, merges with a non-listed company. In this respect, shareholders who do not participate in the resolution approving the merger are entitled to withdraw from the company.

Borsa Italiana may revoke the listing of a financial instrument in the event of a prolonged lack of trading or where it deems that owing to special circumstances it is not possible to maintain a normal and regular market for such instrument.

Delisting requirements

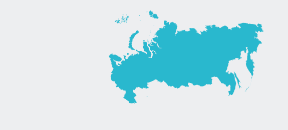
Luxembourg

Delisting requirements generally depend on the rules of the market on which the shares are traded. A delisting from the Luxembourg Stock Exchange (the "LuxSE") requires the prior approval of the board of directors of the target and a substantiated delisting request to the LuxSE. A delisting request that immediately follows a successful bid is generally granted by the LuxSE.

The Netherlands

Delisting requirements depend on the market on which the shares are traded. Delisting from Euronext Amsterdam pursuant to a public offer situation requires:

- the bidder to hold 95% of the shares; the issuer to agree to the delisting; and
- the submission of a written request to Euronext Amsterdam.



Russia

The delisting requirements depend on the quotation list on which the shares are traded. If the shares are traded on the Moscow Exchange in the quotations lists of the first or second level they will cease to comply with the listing requirements if, as a result of a public takeover, less than 10% of all shares are offered for public trading. Further, if the public float is (i) 7.5% or less for the shares listed in the first level quotation list or (ii) 4% or less for the shares listed in the second level quotation list, in each case, for more than six months in succession, the Moscow Exchange may take a decision on whether to delist the shares from the first or second level list or to downgrade the listing to a lower level.

A company can also delist voluntarily. A decision to delist voluntarily will fall within the competence of the general shareholders' meeting and require a qualified majority of 75% of votes cast at that meeting, provided that the shareholders who voted against the delisting or did not participate in the vote shall have the right to require the company to redeem their shares. The company would also be required to submit an application to the stock exchange to delist.

Spain

As a general rule, delisting would only take place through a takeover bid.

In order to obtain a delisting through a delisting offer the following requirements would have to be met:

- a resolution of the GSM;
- cash consideration for an equitable price; and
- the offer would have to be addressed to all the shareholders.

Amongst other exceptions, a de-listing offer would not be necessary in the event that a prior takeover bid had been launched for the entire share capital of the target during which the intention to delist its shares was announced and a justification of the price is provided by means of a valuation report, and provided that the sale of all securities is allowed by means of a purchase order, at the same price as the preceding takeover bid, for at least one month during the six month period following the end of the preceding bid.

Switzerland

Delisting generally requires a resolution of the board of directors of the target (not a shareholders' resolution) and the submission of a written application to SIX (or BX Swiss) for a delisting. SIX has to formally approve a delisting decision.

While there is no specific free float threshold requirement, the SIX regulatory board has to consider the protection of investors, fair and orderly trading, the legal environment and the interests of the applicant. The period between the delisting announcement and the last day of trading is in practice between three and twelve months.

18 Directors' duties and litigation issues

United Kingdom

The Code requires that the target board must act in the interests of the shareholders as a whole and not deny shareholders the opportunity to consider a bona fide offer.

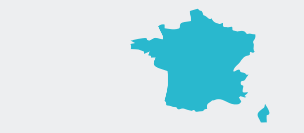
The directors are also subject to statutory duties under the Companies Act 2006.

The target directors must take independent financial advice and make the substance of that advice known to shareholders. In addition, the directors must give their views on the offer (which usually takes the form of a recommendation) and comment on the effect of the offer on key stakeholder groups including employees.

Directors must also be conscious of their duties to have regard to other stakeholder interests when considering whether to seek to extract a post-offer undertaking from a bidder as part of the commercial terms of a deal.

The Code specifically provides that price is not the only factor that boards need to have regard to when considering its views on an offer.

Litigation is rare in public takeovers and tends to be confined to matters such as conflicts of interests amongst advisers.

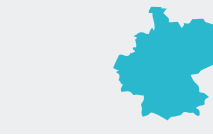


France

The target board must act in the best interests of the company and its stakeholders.

The target directors must issue a reasoned opinion in relation to the offer and comment, inter alia, on the interest of the offer for the company, its shareholders and its employees. Since the Loi PACTE dated 24 May 2019, the target board must take into consideration the impact of the offer on the social and environmental matters of the target, and, as the case may be, and if provided for in the target articles of association, the reason of existence (raison d'être) of the target; both may consist in a defence mechanism. When a conflict of interest situation is likely to arise, applicable regulation requires that the opinion be rendered after consideration of a fairness opinion prepared by an independent expert.

Litigation (appeals against AMF decisions or board defensive actions) often occurs in hostile takeovers.



Germany

In general and also in a takeover situation, the management board and the supervisory board of the target must always act in the best interest of the company, its shareholders and the company's other stakeholders.

In connection with a takeover offer, the management board and the supervisory board of the target are required to issue a statement in relation to the fairness of the offer, including the consideration, consequences for employees, their representatives and the target's business if the offer is successful, the objectives the bidder pursues with the offer and whether the members of the management board and supervisory board intend to accept the offer. The management board and the supervisory board can issue separate statements, but a joint statement is also permissible.

Litigation against individual board members is rare.

Ireland

Generally, the target board is required by the Rules to act in the interests of the shareholders as a whole and not to deny shareholders the opportunity to decide on the merits of an offer. In particular, the target board must take independent financial advice, make a recommendation in relation to the offer and comment on the effect of the offer on the target company's interests (including the employment repercussions). In addition to the Rules, the directors are also subject to common law duties in considering an offer, and target boards often seek to solicit additional bids or undertake an auction in order to try to maximise shareholder value.

More generally, the directors of Irish companies are subject to fiduciary and statutory duties in performing their role, (eg to avoid conflicts of interest, to act honestly and diligently, etc.) These duties apply in the same way in a takeover situation as they do at other times.

In the context of public takeovers, and of directors' duties in general, litigation is very rare.

Italy

The target board must act in the interests of the shareholders as a whole.

The directors of the target must issue a statement in relation to the offer, concerning (i) an evaluation of the takeover offer and the price, as well as (ii) an assessment of how the offer may affect the target's interests (including employment levels and location of the company's premises). The statement must disclose any shareholder meeting called for the purposes of authorising frustrating actions.

Under certain circumstances (ie tender offer launched by insiders), the independent directors of the target must issue a separate opinion concerning their evaluation of the offer and the price prior to the approval of the target directors' opinion.

Litigation is very rare in the context of public takeovers.

Directors' duties and litigation issues

Luxembourg

The board of directors of the target must always act in the best interest of the company as a whole and not, for example, those of any particular class of security holders. The board of directors must also not take any action which could deny the shareholders the opportunity to decide on the merits of a takeover bid.

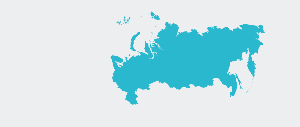
The board of directors of the target must provide its views on the tender offer through the issuance of a well-reasoned and exhaustive opinion.

Litigation is very rare in a public takeover context (except in connection with defensive measures).

The Netherlands

The target board has to act in the best interests of the company and is required to take the interests of all stakeholders into account, which means that the board may not necessarily support the highest offer.

Litigation is not uncommon in the public takeover context. It has regularly occurred in the context of hostile takeovers where defensive measures are taken to prevent an unwelcome shareholder from acquiring control of the company or to fend off activist shareholders. Minority shareholders have also initiated litigation in situations where a bidder is seeking to 'obtain control' over the target and the acceptance level is below 95%. It should also be noted that shareholder interest groups tend to use violations of market abuse rules to claim for damages.

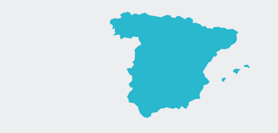


Russia

The target board must act in the interests of the company.

The target directors must make a recommendation in relation to a voluntary or mandatory offer and comment on, amongst other things, the offer price and the plans of the bidder in relation to the company and employees of the target.

Litigation is rare in a voluntary takeover situation. It is more common in the context of a mandatory offer where the shareholders of the target challenge the offer price on the grounds that it is not market.



Spain

The board of directors must safeguard the corporate benefit of the company, and therefore act in the best interests of the shareholders as a whole. Within ten calendar days following the commencement of the acceptance period, the board of directors of the target company must publish a report on the bid including (i) its observations in favour of the bid or against it, (ii) the existence, if applicable, of any agreements between the target company or its directors with the bidder, its directors or shareholders, (iii) the opinion of the members of the board regarding the takeover bid and if they hold shares directly or indirectly in the target company whether or not they intend to accept the offer.

Litigation is very rare in the context of public takeovers.

Switzerland

The board of directors of a Swiss target has to safeguard the interests of the company in good faith. Generally, the interests of the company include the common interest of all shareholders and, in addition, of all other stakeholders of the company (such as employees, creditors, etc.). Consequently, the offer price is a key but not the only factor that a target board needs to consider when evaluating a takeover offer.

The board of directors has to submit a report to the shareholders containing all the information that is required to enable them to make an informed decision. The board shall recommend that the offer be accepted or rejected (or enumerate the advantages and disadvantages of the offer without making a recommendation). In a friendly offer, the report is usually published in the offer; if not it must be published by the target company not later than 15 trading days after the publication of the offer prospectus.

Litigation has so far been very rare in the context of public takeovers.

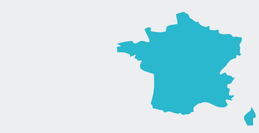
19 Basic tax implications

United Kingdom

Shareholders may be liable to tax on any capital gain crystallised on the sale of target shares, but relief may be available to defer or eliminate liability in some cases (eg share exchange offers, loan note consideration or, for corporate shareholders, the substantial shareholding exemption).

Stamp duty of 0.5% of the offer price is payable by the bidder on a takeover offer, including offers effected by means of a scheme of arrangement (other than for takeovers of AIM listed companies, as shares admitted to AIM are exempt from stamp duty).

Tax losses and interest carried forward in a target might be restricted after a successful bid.

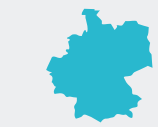


France

Shareholders may be liable to tax on any capital gain crystallised on the sale of target shares, but relief may be available to defer or eliminate liability in some cases (eg exchange offers). Transfers of shares listed in France or abroad but issued by a French company with a market capitalisation exceeding €1 billion as at 1 December of the year preceding that of the transfer are subject to a financial transaction tax ("FTT") at the rate of 0.3% of the purchase price (a list of such French companies as at 1 December 2020 is published by the French tax administration). There is no specific exemption for takeover bids.

In all other cases outside the scope of the FTT, no transfer tax is generally payable on transfers of shares in French listed companies unless the transaction is formalised in a written deed (in which case transfer tax is payable at 0.1% rate on the purchase price).

Takeovers generally have no impact on tax losses and interest charges carried forward by the target.



Germany

The transfer of shares does generally not trigger any transfer taxes. However, if the target holds real estate, real estate transfer tax may apply with respect to such real estate (depending on the structure in which the target holds the real estate and the percentage of shares acquired by the bidder).

Current year tax losses, tax carry forwards and interest carried forward in a target may fall away as a consequence of a successful bid.

Shareholders may be taxed on capital gains realised on the sale of target shares, but relief may be available to defer or eliminate such tax in some cases.

Ireland

Shareholders may be liable to tax on any capital gain crystallised on the sale of target shares, but relief may be available to defer or eliminate liability in some cases (eg share exchange offers, reliefs and exemptions, but not loan note consideration).

Stamp duty of 1% arises on a takeover offer unless an exemption applies.

Tax losses and interest carried forward in a target might be restricted after a successful bid.

Italy

Shareholders may be liable to income tax on any capital gain crystallised on the sale of target shares, but relief may be available to reduce liability in some cases (eg corporate shareholders may apply the 'PEX Regime' under which a seller may, in substance, be exempt from tax on capital gains in relation to 95% of the gain arising on the sale of certain shares, provided certain conditions are met).

The carry forward of tax losses and passive interest of the target company might be restricted after a successful bid.

From 1 March 2013 the transfer of shares of Italian resident stock companies (società per azioni) is subject to the Italian FTT, whose rate applies at 0.20% or, where shares are traded on a regulated market or in a multilateral trading facility ("MTF"), at a reduced 0.10% rate, although certain exclusions and/or exemptions may apply (including intra group transactions).

In addition, the transfer of shares negotiated on a regulated market or in a MTF issued by Italian companies whose average capitalisation, as at November of the year prior to the transfer, was lower than Euro 500 million are exempt from FTT.

Basic tax implications

Luxembourg

Shareholders may be liable to tax on any capital gain crystallised on the sale of target shares, but relief may be available to defer or eliminate liability in some cases (eg share exchange offers or, for corporate shareholders, by virtue of the participation exemption regime, provided certain conditions are met).

The transfer of shares does not generally trigger any transfer taxes or stamp duties.

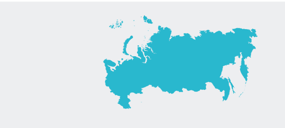
The takeover has in principle no impact on tax losses carried forward of the target.

The Netherlands

Shareholders may be liable to tax on any capital gain crystallised on the sale of target shares but relief may be available to defer or eliminate liability in some cases (eg for corporate shareholders, the participation exemption or exchange offers). Anti-abuse rules may apply with respect to the application of the exemptions and/or reliefs.

A sale of shares is generally an exempt supply for VAT purposes. A sale of a business may be outside the scope of VAT if it qualifies as a transfer of a going concern for VAT purposes. The transfer of shares is generally not subject to any transfer taxes or stamp duty, however a real estate transfer tax applies to the transfer of shares in certain real estate companies.

Tax losses and interest deduction carried forward in a target might be restricted after a successful bid.



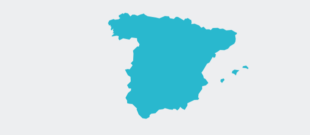
Russia

Russian resident corporate shareholders including companies incorporated in Russia and foreign companies with a place of effective management in Russia (and non-resident corporates operating in Russia through a permanent establishment), may be liable to tax on any gain crystallised on the sale of target shares, but relief may be available to eliminate liabilities in some cases (eg on the sale (in certain circumstances) of non-listed Russian shares or listed Russian shares of high tech/innovative Russian companies both owned by the seller for more than five years).

Non-resident corporate shareholders disposing of shares in non-listed Russian real estate companies (those companies whose assets consist, directly or indirectly, of Russian real estate for more than 50%) may be subject to 20% withholding tax unless a double tax treaty provides otherwise.

The transfer of shares is not subject to any transfer tax or stamp duty.

Tax losses carried forward in a target are unlikely to be restricted after a successful bid.



Spain

Spanish corporate shareholders may be entitled to a 95% exemption on capital gains crystallised on the transfer of target shares provided that certain requirements are complied with under the Spanish participation exemption regime (eg the stake to be transferred represents at least 5% of the company's share capital and has been held for one year).

Similarly, EU and EEA corporate shareholders may be exempt from Spanish capital gains taxes provided that they met the Spanish participation exemption regime and a number of additional requirements. Non-EU resident shareholders would be in principle liable to tax on any capital gain crystallised on the sale of target shares (without prejudice to the provisions foreseen in the applicable tax treaty).

Please note that special rules apply in the case of Spanish REITs (i.e. the so-called SOCIMIs).

The transfer of shares of listed companies is generally not subject to any transfer taxes and/or Stamp Duty.

Switzerland

Individuals resident in Switzerland holding target shares as private assets should realise a tax-free capital gain or a non-deductible capital loss. However, the capital gain may be subject to income tax, if at least 20% of the target's share capital is sold by one or more shareholders acting jointly.

Individuals holding target shares as part of a business in Switzerland, Swiss resident corporate taxpayers and corporate taxpayers resident abroad holding target shares as part of a permanent establishment in Switzerland, should realise a taxable capital gain or a tax deductible capital loss.

Shareholders who are not resident in Switzerland and who have not engaged in a trade or business through a permanent establishment in Switzerland should not be subject to Swiss tax.

The tendering of target shares under a takeover offer should not trigger any Swiss withholding tax, as long as the taxable reserves of the target remain unchanged.

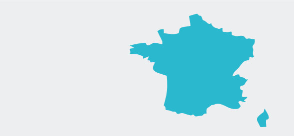
Acceptance of the takeover offer is subject to Swiss stamp duties unless an exception can be applied.

20 Rules on arrangements with management

United Kingdom

Arrangements between a bidder and the target management are not generally prohibited but shareholder approval is required in relation to some deals under the Companies Act 2006, the Listing Rules, and Rule 16 of the Code (special deals and management incentivisation) may also apply, in which case the target's financial adviser may have to confirm that the arrangements are fair and reasonable and approval by the target's independent shareholders may be required. Any discussions about management incentivisation will have to be disclosed.

If the management is involved in the offer, it is the independent directors who must advise shareholders of their view of the merits of the offer.



France

The management of the target company may enter into agreements with the bidder. However, in these circumstances:

- the board of the target must appoint an independent expert to prepare a fairness opinion;
- the main provisions of these agreements must be disclosed in the offer documents; and
- the "deal" must generally not contain favourable conditions likely to contradict the principle of equal treatment of shareholders.

Special attention must be paid to such agreements entered into by the target as they may qualify as related party agreements and should therefore be subject to the specific procedure applicable to related party agreements.

Germany

Under German takeover rules, payments to members of the management board are not generally prohibited. However, certain restrictions may apply and payments may require shareholder and/or supervisory board approval.

Payments (actual or future) of cash or the provision of other benefits to members of the management board or the supervisory board must be disclosed in the offer document. Thus, any arrangements will be subject to scrutiny in relation to compliance with the relevant board's fiduciary duties.

Ireland

Any arrangement with a management shareholder that involves dealing in target shares or the acceptance of an offer and has terms favourable to that shareholder that will not be made available to all shareholders is prohibited without consent from the Irish Takeover Panel. Consent will normally only be given for these "special arrangements" if the non-management shareholders approve the arrangement.

In addition, unless the Irish Takeover Panel has consented otherwise, management incentivisation arrangements with the bidder must be disclosed in the offer document, and the financial adviser to the target must publicly state that it believes these to be fair and reasonable. The Irish Takeover Panel may require these arrangements to be subject to an affirmative vote of non-management shareholders.

Italy

Not generally prohibited, but subject to certain provisions providing for disclosure of directors' interests. In particular, pursuant to article 2391 of the Italian Civil Code, the director must inform the other directors and the auditors of any interest he has in a specific transaction of the company, specifying the nature, the terms, the origin and the relevance. In addition, if the director having an interest is a managing director, they must abstain from exercising their powers in order to carry out the transaction. Potential arrangements must be described in a specific section of the offer document.

If the offer is launched by the management or by other persons acting in concert with them (ie a case of tender offer launched by insiders), the independent directors of the target, prior to the approval of the target directors' opinion, must issue a separate opinion concerning their evaluation of the offer and the price.

Rules on arrangements with management

Luxembourg

The management of the target company may enter into agreements with the bidder. Nevertheless, in such case:

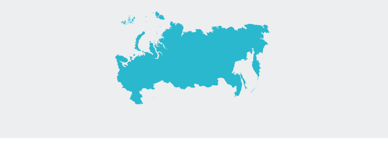
- the board of directors of the target must appoint an independent expert to prepare a fairness opinion;
- the main provisions of these agreements must be disclosed in the offer documents; and
- the agreement must generally not contain favourable conditions likely to contravene the principle of equal treatment of shareholders.

Moreover, members of the board of directors of the target must ensure compliance with prevailing conflict of interest rules deriving from the 1915 Law.

The Netherlands

Arrangements between a bidder and the target boards are generally not prohibited. Prompt and full disclosure to the supervisory board (and in the offer document) is required and supervisory board approval may be required.

Any exit and change of control packages that may be granted to directors of the target must be disclosed in the offer document.



Russia

Arrangements with management are generally not prohibited, but deals will be subject to the legal duties of the target's management.

Spain

Dealings with the management are allowed.

In any case, details concerning those dealings would have to be disclosed in the offer document along with any advantages that the bidder may obtain from those dealings.

Switzerland

Arrangements between a bidder and the target's directors or senior management are generally not prohibited. However, any such arrangement with the bidder that could potentially lead to a conflict of interest must be disclosed. Further, any conflicted directors or senior management would need to abstain from voting on any matter concerning the takeover offer.

Excessive compensation payments by a Swiss target to its directors and/or senior management, such as severance payments or transaction bonuses may be illegal and may even result in criminal liability.

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