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I. OVERVIEW OF SOME KEY FEATURES OF M&A

A. Issues for public and private M&A

1. Foreign ownership restrictions/Regulatory process

FRANCE

Foreign investments can generally be made freely in France except when they relate to strategic sectors, in which case they are subject to the prior authorisation of the French Ministry of the Economy.

Strategic sectors were originally limited to national defense, information technology systems, private security services and the gambling industry. In 2014, the list was expanded to include new sectors such as energy, transport, water, public health and telecommunications.

For non-EU investors, the prior authorisation regime applies to investments as a result of which the foreign investor (i) acquires control of or crosses the threshold of 33.33% of the share capital of a French target or (ii) acquires all or part of a French business.

Any transaction completed without the prior authorisation of the French Ministry of the Economy in violation of French foreign investments regulations is null and void. Criminal sanctions may also apply.

GERMANY

In general, German law makes no distinction between domestic and foreign (private, public or state-owned) investors. However, under the German Foreign Trade and Payments Act ("AWG") investments by foreign companies in sensitive industries, namely defense, encryption and satellite, may be prohibited by the German Federal Ministry for Economic Affairs and Energy ("BMWi") in order to safeguard German security interests. Respective acquisitions need to be notified to BMWi and are suspended by law until BMWi grants its approval. If the BMWi does not initiate a formal review within 1 month after receiving the investor’s notification, the approval is deemed to be granted.

Furthermore, any acquisition of 25% or more of voting rights of a domestic company by an investor from outside the EU/EFTA may be prohibited by the BMWi — with consent from the German government — if it threatens German public order or security. Respective transactions do not require notification under the AWG but BMWi may request information within 3 months after the acquisition or the publication of the decision to launch a takeover offer and eventually prohibit the transaction within an additional 2 months. In order to avoid legal uncertainty, foreign investors from outside the EU/EFTA can request a legally binding certificate of non-objection from BMWi before the transaction.

In addition, there are specific restrictions applicable to both national and foreign investors regarding acquisitions of targets operating in certain regulated industries, such as financial service, insurance or media. In particular, the acquisition of control or a qualified holding in banks or financial service institutions is subject to prior authorisation of the German Federal Financial Supervisory Authority ("BaFin") and/or the European Central Bank ("ECB"). BaFin and ECB have discretionary decision power based upon the general principal of the sound and prudent management of such institutions, i.e., quality, solidity and transparency of the person acquiring such entities.

ITALY

Golden Power: the Italian Government has certain “golden” powers to veto or condition the purchase of interests by a non-EU person in the share capital of Italian companies which hold strategic assets (the "Strategic Assets"), irrespective of whether the Italian Government is a shareholder of the relevant company (the "Triggering Transaction"). Any Triggering Transaction must be notified in advance to the Italian government. Once a notification has been made, the Italian government has a period of 15 business days to review the transaction and raise any objections. This period may be extended in the event that the Italian government requests additional information and whilst the review period is ongoing the notifying party is restricted from taking any steps towards acquiring the relevant stake. Should the Italian government elect not to (or fail to) exercise its powers during the review period, the envisaged transaction may be legitimately completed.

Limitations on the acquisition of stake equity interest in supervised entities (e.g., banks, payment institutions, etc.): the acquisition of, or the undertaking to acquire, a controlling or significant stake in certain supervised entities, such as banks, investment firms, financial institutions, electronic money institutions and payment institutions (the “Supervised Company”) is subject to prior authorisation of the Bank of Italy or European Banking Authority ("EBA") and/or of CONSOB. The Bank of Italy or EBA has a discretionary decision power based upon the general principal of the sound and prudent management of such institutions, i.e., quality, solidity and transparency of the person acquiring such entities.
UNITED KINGDOM
In the UK, M&A transactions involving private companies generally take the form of either a private purchase of shares of the target company or a private purchase of the target’s underlying assets and business.

M&A transactions involving public companies are regulated differently. They will usually be structured as either a public offer for shares in the target company or as a scheme of arrangement. Such transactions are regulated by the City Code on Takeovers and Mergers (the “Code”) which is issued by the UK’s Takeover Panel (the “Panel”).

A new regime (under the Companies (Cross-Border Mergers) Regulations 2007) has been introduced relatively recently by which UK companies may combine with other businesses within the European Economic Area (“EEA”), providing the UK with a true statutory merger alternative for the first time. For the Regulations to apply, the transaction must involve at least one UK-incorporated company and at least one company incorporated in an EEA state other than the UK (i.e., the merger must be genuinely cross-border).

There are generally no restrictions on the foreign ownership of businesses in the UK, although there are special rules relating to certain industry sectors such as airlines and financial services. There are no currency or exchange control regulations affecting inward or outbound investment or the repatriation of income or capital.

Deal-making in Britain is generally free from political interference and government intervention has been limited to exceptional cases. The UK Government has the power to regulate and potentially block acquisitions through a public interest test in key strategic sectors, such as media and defence, or to preserve the stability of the financial system. The new UK Prime Minister, Theresa May, has, however, signalled a more interventionist approach to takeovers of strategically important UK businesses by foreign acquirers in the future. There are signs the new government will monitor deals more closely, but the details remain unclear. A lengthy period of consultation by the UK’s Department for Business, Energy and Industrial Strategy is expected before any changes are introduced.

2. Antitrust/Merger control triggers

EU
a. One stop shop

Under the EU Merger Control Regulation (“EUMR”), the European Commission is solely competent to review mergers where revenue thresholds exceed the following levels under two alternative scenarios:

Scenario 1

The combined worldwide turnover of all parties is more than €5 billion (US$5.5 billion) AND the turnover in the EU of each of at least two parties is more than €250 million (US$277.4 million); UNLESS each of the parties achieves more than two-thirds of its EU turnover in one and the same Member State; OR

Scenario 2

The combined worldwide turnover of all parties is more than €2.5 billion (US$2.8 billion); AND the turnover in the EU of each of at least two parties is more than €100 million (US$111 million); AND the combined turnover in each of at least three Member States is more than €100 million (US$111 million); AND the turnover of at least two parties in each of those three Member States is more than €25 million (US$27.7 million); UNLESS each of the parties achieves more than two-thirds of its turnover in the EU in one and the same Member State.

This “one stop shop” review is beneficial to companies in that they do not have to file multiple clearance requests in EU member states, thereby reducing costs, red tape and uncertainty.

Where the thresholds of a transaction fall below the EU thresholds, national competition authorities may have jurisdiction to review the merger: all EU Member States except Luxembourg have their own merger control regimes with their own individual thresholds. The merger regimes of France, Italy, the UK and Germany are described below. In some instances (known as “referrals”) jurisdiction can be transferred between the European Commission and the national competition authorities. For example, where a transaction does not meet the EU thresholds but triggers reviews in three or more Member States, the parties can request that the European Commission assess the transaction in order to benefit from the “one stop shop” review.
b. Mandatory and suspensory merger regime
When an acquisition meets the EU revenue thresholds, notification is mandatory and the transaction cannot close before clearance is obtained. Failing to notify a reviewable transaction or implementing the transaction before clearance (also known as “gun-jumping”) can attract significant fines in Europe.

Similar prohibitions on gun-jumping exist in many jurisdictions around the world including China. However, whereas in China there is currently a statutory limit of CNY500,000 on fines for failure to notify, in Europe the European Commission can impose fines of up to 10% of the aggregate turnover. In fact, the European Commission’s fines for gun-jumping are among the highest a competition authority has ever imposed.

In 2009 the European Commission fined Belgian energy company Electrabel €20 million for failing to notify a transaction. In 2014 Norwegian seafood company Marine Harvest was also fined €20 million for failing to notify a transaction. Both transactions related to acquisitions of minority stakes.

c. Types of transactions that trigger EU merger notification
The European Commission has jurisdiction to review mergers where one company acquires control of another (“sole control”) or where several companies acquire control of another (“joint control”).

Note that while the acquisition of minority stakes (without control) does not trigger a review under the EU Merger Regulation, such an acquisition may still necessitate a review in certain Member States such as Germany, Austria and the UK.

d. Transactions involving Chinese State-owned enterprises
Transactions involving Chinese State-owned enterprises (“SOEs”) can also trigger the EU merger control regime, even when the SOE in question has very limited activities in Europe. This is because the European Commission could consider that the turnover of a broader set of SOEs should be taken into account when considering whether the transaction qualifies for review under the EU Merger Regulation. This was the approach the European Commission followed in its recent EdF/China General Nuclear Power Corporation (“CGN”) decision. In this case, the Commission considered that it should take into account the revenues of CGN’s owner, the Central Chinese Assets Supervision and Administrative Commission (“SASAC”) for the purposes of determining jurisdiction because CGN did not enjoy autonomy from SASAC in its decision-making. The Commission’s practice impacts not only the jurisdictional assessment, but also the substantive assessment that the Commission will undertake during its merger review (see further below): while an SOE may consider that an acquisition or investment has no impact on competition, this may not, in fact, be the case if another SOE is active in the same industry as the target or investee. The Commission’s approach in the EdF case means that a rigorous assessment of the antitrust implications of investments by SOEs is strongly advised.

e. EU merger review procedure
At what stage of the transaction can the notification be filed? A transaction may be notified for merger clearance after an agreement has been signed, when a public bid has been announced or where the parties concerned demonstrate a good faith intention to conclude an agreement (or, in the case of a public bid, where the purchaser has publicly announced an intention to make such a bid).

Simplified vs. normal process — Depending on whether the transaction is likely to have an effect on competition in the EU, a merger may need to be notified to the European Commission using a Short Form CO (simplified process) or a Long Form CO (normal process).

Pre-notification discussions — The parties first submit a draft of the Form CO to the European Commission and engage in pre-notification discussions with the case team. The pre-notification discussions should be initiated at least two weeks prior to the date of expected (formal) notification. However, depending on the complexity of the case, the pre-notification period may be significantly longer and include meetings between the case team and the parties to the transaction.
**Review period** — Following the formal submission of the Form CO, the European Commission has **25 working days** to conclude its Phase I investigation. The review period may be increased to **35 working days** if the parties offer remedies to remove any competition concerns the European Commission may have (for example, the parties may offer to sell an overlapping business that is in fact only a small part of the overall transaction). If, however, the European Commission believes that a remedy offer does not alleviate its concerns or if the parties do not offer a remedy, it will open a Phase II investigation by issuing a so-called Article 6(1)(c) decision. The EC then has **90 working days** (with an additional 45 day extension if necessary) to complete the investigation. At the end of Phase II the merger is either approved, approved with conditions (i.e., a remedy is accepted) or prohibited.

<table>
<thead>
<tr>
<th>Submission of Draft Form CO</th>
<th>Submission of Form CO</th>
<th>Unconditional Clearance (25 WDs)/ Clearance w. remedies (35 WDs)/ Issuance of Art. 6(1)(c) EUMR decision</th>
<th>Unconditional Clearance/ Clearance w. remedies/ Prohibition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 weeks to several months</td>
<td>2 weeks to 1 month (or even more)</td>
<td>25 to 35 WDs</td>
<td>90 to 125 WDs</td>
</tr>
</tbody>
</table>

**f. The substantive review — what does the European Commission look at?**

During the merger review process, the Commission considers whether a transaction will lead to a significant impediment to effective competition in the EU. When doing so, it will consider whether the merging parties are actual or potential competitors (so that the merger would negatively impact competition due to the increase in concentration on the market). In addition, the European Commission may consider the “vertical” effects of a merger — for example, if a merger between a customer and supplier of product X could lead to other suppliers of product X going out of business because they would not have anywhere to sell product X.

The Commission conducts its assessment on the basis of the extensive information provided by the parties in their Form CO but also by canvassing the views of customers, competitors and suppliers. It can therefore be critical to make sure that customers are happy with a deal that is announced in order to avoid any complaints during the Commission’s merger review.

The merger review undertaken by the European Commission is based solely on competition grounds. Industrial policy or public interest considerations do not play a role in the assessment. While other European Commission Directorates may provide input in the review (and Phase II decisions are technically decided by the College of Commissioners as a whole), the Directorate for Competition (DG Comp) decides on its review independently.

It is worth noting that in global transactions where there is a possible competition concern, the European Commission cooperates with other national competition authorities, such as the US antitrust agencies, the Canadian Competition Bureau, the Australian Competition and Consumer Commission, the Japanese Fair Trade Commission, the Brazilian CADE and occasionally with MOFCOM. In such cases, forming a global antitrust strategy from the early stages of the transaction negotiations is very important.
g. European Commission decision statistics

The vast majority of cases are cleared in Phase I with no commitments and remedies or prohibitions only form a small minority of the outcome of the European Commission’s review.

Since 1 May 2004 (i.e., the entry in force of the EU Merger Regulation), there have been only six prohibition decisions:

<table>
<thead>
<tr>
<th>Date</th>
<th>Parties</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>Ryanair/Aer Lingus</td>
<td>Airline</td>
</tr>
<tr>
<td>2011</td>
<td>Olympic/Aegean Airlines</td>
<td>Airline</td>
</tr>
<tr>
<td>2012</td>
<td>Deutsche Börse/NYSE Euronext</td>
<td>Stock Exchanges</td>
</tr>
<tr>
<td>2013</td>
<td>UPS/TNT Express</td>
<td>Logistics</td>
</tr>
<tr>
<td>2013</td>
<td>Ryanair/Aer Lingus II</td>
<td>Airline</td>
</tr>
<tr>
<td>2016</td>
<td>Hutchinson 3G UK/Telefonica UK</td>
<td>Telecoms</td>
</tr>
</tbody>
</table>

European Commission prohibitions since 1 May 2004

However, it is worth noting that Phase II investigations are increasingly resulting in challenges/prohibitions. Since 2011, in the EU, in deals where a Phase II review was opened, more than 60% have either been prohibited or required a remedy. This intervention trend is not unique to the European Commission but is the result of more complex industrial mergers coming in front of regulators all over the world in the aftermath of the financial crisis.

FRANCE

In France, transactions that are considered as being a “concentration” (i.e., acquisitions or full-function joint ventures) are subject to the prior authorisation of the French Competition Authority (the “FCA”).

A notification has to be filed with the FCA if the transaction meets the following thresholds: (i) the combined worldwide turnover achieved by all the companies involved in the transaction exceeds €150 million, (ii) the turnover achieved in France by each of at least two companies exceeds €50 million, and (iii) the operation does not fall within the European Commission's jurisdiction.
Closing of the contemplated transaction is subject to clearance from the FCA except in the case of a public tender offer if the voting rights attached to the shares acquired are not exercised until the FCA authorises the transaction.

In addition, in the context of a public tender offer, the bidder can provide that its offer is subject to the clearance of an antitrust authority only to the extent such antitrust authority is the FCA, the European Commission or the antitrust authority of a state of the European Economic Area or of the United States of America.

The timeframe of the FCA's review process is 25 business days from the date of receipt of a complete notification for simple cases (Phase I without any remedy) and approximately 4 months for more complex cases for which the FCA decides to open an in-depth examination (Phase II). For public tender offers, in the event that the FCA (or a competent antitrust authority of a foreign state) launches an in-depth examination in the context of such public tender offer, the offer is deemed to have automatically lapsed.

**GERMANY**

German and EU antitrust regimes apply, when certain turnover thresholds are exceeded. For German merger control to apply, (i) the combined aggregate worldwide turnover in the preceding financial year of the companies involved in the merger must be more than €500 million, (ii) at least one company must have a turnover within Germany of more than €25 million, and (iii) another company must have turnover within Germany of more than €5 million. Specific thresholds apply for companies trading goods, companies operating in the media business, financial institutions and insurance companies. EU merger control (which provides for higher thresholds) supersedes and replaces German merger control.

Unlike the EU merger control, which may apply exclusively to the acquisition of control over the target, the German merger control may also apply to acquisitions of a non-controlling minority shareholding of 25% or more of the capital or the voting rights in the target or, even below the 25% threshold, in case of an acquisition of material competitive influence.

**ITALY**

Mergers, acquisition of control and joint ventures must be approved by the Italian Antitrust Authority (“Autorità Garante della Concorrenza e del Mercato”) pursuant to the Law No. 287 of 10 October 1990 provided that certain revenue thresholds are met by the parties. In particular, a filing will be required when (i) the combined revenues of the buyer and target in Italy exceed €498 million in the year before the acquisition and (ii) the revenues in Italy of the target exceed €50 million. A notification to the European Commission will instead be required when the EU turnover thresholds are met by the parties.

The “notion of acquisition” of control refers to both legal and de facto control. It covers acquisitions of the majority of the voting rights of the company, as well as acquisition of minority shareholdings accompanied with veto rights on so-called strategic matters, such as the approval of the budget, the business plan or the hiring/firing of the top management.

The parties shall submit a notification to the Italian Antitrust Authority before the transaction is completed. The transaction can be closed as soon as the notification is made without waiting for the approval although by doing so the parties bear the risk that following a negative decision, the Italian Antitrust Authority orders a demerger of the companies. The authority has thirty days to decide whether to open an in-depth investigation, or approve the transaction. Transactions without substantive overlaps or vertical relationships between the parties are usually cleared in thirty days without an in-depth investigation. An in-depth investigation has an additional duration of 45 days and can be extended for a further 30 days, resulting in an overall maximum duration of 105 days. At the end of the in-depth investigation, the authority may authorise the transaction, unconditionally or subject to remedies such as divestitures, or block it.

**UNITED KINGDOM**

UK competition law aims to ensure competition in the market place is not restricted. Practices that may fall foul of UK competition legislation are wide ranging and can include price-fixing, production quota fixing, exclusive supply arrangements and purchase obligations and non-compete clauses. Fines for breaches of competition law can be severe, and third parties suffering loss may be able to bring a private actions for damages and some offences may attract criminal liability.

**EU Merger Control**

If the EUMR does not apply, the CMA may have jurisdiction where there is a “relevant merger situation” — i.e., where: (i) two or more enterprises cease to be distinct and (ii) either UK turnover of the enterprise being taken over
exceeds £70 million or, as a result of the transaction, the merged entity will supply or purchase 25% or more of goods or services of a particular description in the UK.

Although there is no obligation to notify in the UK, in reality a large number of transactions are notified in the interest of legal clarity and to limit liability in the future. The CMA may become aware of the merger, either as a result of third-party complaints or its own research. Notification to the CMA is made by completing a merger notice document. As the merger notice document requests a large amount of information, pre-notification discussion with the CMA is recommended, in particular for cases where competition is likely to be an issue, and in such discussion the CMA will assist the parties to determine precisely what information will be required to meet notification requirements.

Like the EU system, the UK runs a two phase process for appeal. The first phase involves the CMA considering whether the transaction raises competition concerns in the UK, and is completed in 40 working days. The CMA will proceed to the second phase if it anticipates there will be substantial competition issues, and informal advice can be sought from the CMA in advance as to whether it would be likely to refer a transaction to the second phase of the process. The second phase consists of a longer and more detailed investigation of the potentially problematic transaction, which is usually completed in 24 weeks. At the end of the second phase, the CMA can either clear or prohibit the transaction.

B. Issues specific to public takeovers

1. Regulatory framework

**FRANCE**
Investments in France (such as acquisition of shares, mergers or acquisitions of a business) are regulated by corporate law provisions of the Civil Code and of the Commercial Code.

Transactions involving a target that has issued securities listed in France are also subject to French securities law (codified in the Monetary and Financial Code) and to the General Regulation of the French Financial Markets Authority (the “AMF”).

The AMF has primary responsibility for reviewing the terms and conditions of public tender offers for securities listed in France and for clearance of the documentation for such public tender offers. Given the highly regulated nature of the public tender offer process under French law, communications with the AMF throughout the process are key for both the bidder and the target.

**GERMANY**
A strict regulatory framework applies to investments in German public targets. The key statute is the German Securities Acquisition and Takeover Act (WpÜG), which includes the core provisions for voluntary and mandatory takeover offers. Compliance with the WpÜG is supervised by BaFin. Additional applicable statutes are the German Securities Trading Act (WpHG), which together with the EU Market Abuse Regulation provides for specific disclosure obligations and the German Stock Exchange Act (BörsG), which provides for certain listing and de-listing rules.

The main German public company type is the German Stock Corporation (AG) governed by the German Stock Corporation Act (AktG). Other public company types are the partnership limited by shares (KGaA) and the Societas Europaea (SE).

**ITALY**
Public takeovers are regulated by a set of rules implementing European Directives, namely the Italian Financial Act (Legislative Decree n. 58 of 24 February 1998), the relevant CONSOB implementing regulations, the Italian Banking Act (Legislative Decree 385 of 1 September 1993), the relevant Bank of Italy implementing regulations, the European Union Banking Directives and, in general, the Italian Civil Code.

**UNITED KINGDOM**
UK public takeovers are regulated by the Code, a comparatively quick, cost-effective and flexible regime. The Code is issued by the Panel which is the principal regulator of takeovers in the UK. The Panel’s approach is principles-based meaning that it is able to apply discretion and to deal with unexpected events in bids. It encourages, and often expressly requires, companies and their advisers to consult with it prior to engaging in a particular course of action. Acting in breach of the Code can result in sanctions being imposed on a party to a bid and their professional advisers.
The Code applies where the target is a public company that (i) has its registered office in the UK (including the Channel Islands or Isle of Man) and any of its equity securities are admitted to trading on a regulated market in the UK, or (ii) does not have securities traded on a regulated market in the UK but is considered by the Panel to have its central place of management and control in the UK. If a company has a registered office in the UK but its shares are admitted to trading on a regulated market in another EEA member state or vice versa, the Panel may operate under shared jurisdiction arrangements with the relevant regulator in that other jurisdiction. The Code does not generally apply to private companies unless there has been some public trading or marketing of their shares to the public in the previous 10 years.

The Code imposes procedures for change of control transactions and ensures the integrity of the markets during the period in which a bid is in contemplation. From the point at which a bid is first “actively considered”, the Code requires secrecy to be maintained prior to announcement. Upon commencement of an offer period (the point at which an announcement is made of a possible offer), the Code regulates bid terms, timetable and dealings in relevant securities as well as documentation and disclosures.

2. Typical structures

**FRANCE**
Control of a company that has issued securities listed in France can typically be acquired through a voluntary public tender offer. Mergers can also be used as a way to gain control of a company the shares of which are listed in France but the completion of a merger requires a shareholders’ meeting of the target and must be approved by a two-thirds majority vote of the shares present or represented.

Consideration for securities to be acquired through a public tender offer may consist of (i) cash (offre publique d’achat or “OPA”), (ii) securities (offre publique d’échange or “OPE”) or (iii) a combination of both cash and securities.

In order to increase the potential for success of its offer, a bidder may try to secure undertakings by key shareholders of the target to tender their securities in the offer or may try to acquire a block of shares from identified shareholders prior to the launch of its offer.

Partial tender offers are generally not permitted under French law. Public tender offers must be made for all of the target's ordinary shares and other securities that give access to equity or voting rights.

Minimum tendering percentage may be provided by the bidder and French law provides that, if at the closing of the offer, the bidder does not hold a percentage of securities of the target representing at least 50% of its share capital or 50% of its voting rights, then the offer automatically lapses.

French law generally does not set out any specific method for determining the price at which a public tender offer may be launched, except for mandatory tender offers for which the price offered must be at least equal to the highest price paid by the bidder for the securities of the target over the last twelve months preceding the date of the event triggering the obligation to launch a public tender offer.

**GERMANY**
In general, control over a public target can be obtained through acquisition of shares or a statutory merger. Any takeover of a listed target for a cash consideration may only be accomplished by a voluntary public takeover offer with a preceding stakebuilding (see section 4) and due diligence, if permitted.

**Due Diligence**
While there are various public sources for information on German public targets (in particular corporate documentation, the audited annual financial statements and a management report), bidders usually desire to conduct a due diligence. The management board of the target may allow a due diligence if it is in the target’s best interest.

**Statutory Timeline**
The statutory takeover timeline commences with the bidder’s announcement of the decision to launch a takeover offer (voluntary takeover offer) or the acquisition of 30% or more of the target’s voting rights (mandatory offer).

Within the following 4 weeks (eventually extended by additional 4 weeks), the bidder must file the offer document with BaFin. BaFin then reviews the documentation for up to generally 10 (maximum 15) working days. After approval by BaFin, the offer document must be published on the Internet and in the Federal Gazette.
(Bundesanzeiger), triggering the start of the acceptance period, for which the bidder may choose any time period between 4 to 10 weeks. Upon expiration of the initial acceptance period, the preliminary results of the offer are announced and — to the extent the minimum acceptance threshold is met — an additional acceptance period of 2 weeks commences, after which the final results are disclosed. If a competing offer is launched, the acceptance period for both offers is determined by the end of the acceptance period of the competing offer.

Consideration
As consideration for the target shares, the bidder may generally offer cash, liquid shares listed in EEA or a combination of both.

For takeover offers, minimum pricing rules apply as provided by the regulations of the German Takeover Act Offer Ordinance (WpÜG-Angebotsverordnung). In particular, the consideration must at least be equal to the higher of (i) the highest consideration paid by the bidder (or by entities or persons acting in concert with the bidder) for the acquisition of shares during a 6-month period preceding the publication of the offer document, or (ii) the weighted average stock exchange price during a 3-month period preceding the publication of the bidder’s decision to make a takeover offer (or of the bidder’s attainment of the 30%-control threshold).

Offer conditions
In contrast to mandatory takeover offers, voluntary takeover offers can generally be subject to conditions, which are not under control of the bidder. In practice, offers are usually subject to a certain minimum acceptance threshold. Most common is a minimum acceptance threshold of either 50% or 75% of the shares to allow the bidder to implement relevant post-takeover measures. Further conditions frequently included are “no material adverse change” (MAC) and antitrust approvals.

ITALY
A takeover on an Italian listed company is generally carried out through an Italian vehicle/company established in the form of a joint stock company. An Italian law vehicle is required for: (i) delisting purposes and/or (ii) to push down the debt undertaken to purchase the target, once the acquisition is completed. As a matter of practice, (i) and (ii) above are achieved through a direct, or reverse, merger by and between the acquiring company/bidder and the target listed company. See below under B.9 more details about the delisting through merger.

Due diligence: In case of a friendly takeover, due diligence activities can be agreed with the management of target or the controlling shareholder(s) of target. However, certain market abuse considerations have to be evaluated to assess potential insider risks. The execution of any due diligence exercise or access to any information on the Target, not publicly available, is subject to the previous signing of a non-disclosure and standstill agreement with target and/or its shareholder(s). In case of hostile takeover, any due diligence activity is solely performed on publicly available information.

The commitment to a takeover is an irrevocable obligation for the bidder. Therefore, in order to prevent any antitrust unexpected issue, it is advisable to carry out an appropriate antitrust analysis to evaluate the impact of the acquisition on the business of the acquirer or of its shareholders in advance to any decision to launch a takeover. In general, if there is any antitrust uncertainty, the formal announcement to launch a takeover on an Italian listed issuer can be subject to the condition precedent of the formal clearance on the execution of the acquisition by the relevant antitrust authority/ies. In such case, the irrevocable obligation to launch the takeover is triggered once the bidder/acquirer receives the formal antitrust clearance.

UNITED KINGDOM
The two principal ways that a takeover may be effected in the UK are a contractual offer to all target shareholders to acquire their shares (“offer”), and a court approved scheme of arrangement (“scheme”).

By using an offer, effective control can be achieved more quickly than through a scheme. There is greater flexibility to amend the terms in a competitive situation and the bidder is in control of the process (so an offer is more appropriate if the bid is hostile). For an offer to succeed a bidder must secure acceptances carrying more than 50% of the voting rights in the target. A bidder may choose a higher threshold (e.g., 90%, so that it can exercise compulsory acquisition in respect of the remaining shares), but most bidders reserve the right to waive this acceptance condition down to the minimum simple majority if necessary.

Schemes are commonly used in recommended bids. They put control of the process in the hands of the target which will need to make an application to the court to convene shareholder and court meetings and to sanction the scheme. A scheme requires the approval of a majority in number, representing 75% in value of each share class, of
shareholders attending and voting at the relevant shareholder meeting, together with court approval. An advantage of the scheme is that all shareholders will be bound by the scheme if it is approved. Shareholder apathy can work in the bidder’s favour (as only those shareholders attending and voting are counted) and, unlike an offer, a scheme will never need to be registered with the SEC.

The Code also provides that where a person acquires an interest in 30% or more of the target’s voting rights (or increases its interest when it already holds not less than 30% but not more than 50% of the voting rights) a mandatory bid must be made. This must be an immediate, largely unconditional, cash offer at not less than the highest price paid by the bidder during the 12 months before announcement of the bid. Any interests of concert parties (persons who cooperate to obtain or consolidate control of a company pursuant to an agreement or understanding (whether formal or informal)) are aggregated for these purposes.

**Conditionality**

As well as the acceptance condition, a bid (other than a mandatory bid) will usually also be subject to an extensive set of conditions covering antitrust and regulatory approvals, any necessary approval by the bidder’s shareholders and the listing of consideration shares (where appropriate), as well as conditions dealing with the state of the target’s business. A bid cannot, however, be subject to conditions that depend on the subjective judgement of the bidder. A bidder will generally only be able to rely on conditions to withdraw from the bid if circumstances have arisen which are, in the view of the Panel, of material significance to the bidder in the context of the bid — a very high test. The Panel will not, however, force a bidder to declare its bid unconditional at less than the specified level of acceptances.

**Documentation and standards of care**

It is usual for there to be informal agreement on a recommended bid on such matters as board positions, the location of the head office and any new name of the merged group and for this information to be included in the “firm intention to bid” announcement. This information will be repeated and often elaborated upon in the bid document to be sent to target shareholders and other interested parties within 28 days of the “firm intention to bid” announcement. The Code states that shareholders must be given sufficient information and advice to enable them to reach a properly informed decision on the bid.

The Code specifies the content to be included in both the “firm intention to bid” announcement and the bid document. The bid document must include, among other things, a description of the bid financing, disclosure of bidder interests in target share capital, and the bidder’s intentions with regard to the target’s business, strategy, employees and pension scheme.

Announcements and documents must be prepared with the highest standards of care and their contents should be true, accurate, complete and not misleading. Making misleading or false statements or dishonestly concealing any material facts can incur both civil and criminal liability. The bidder and target directors must publicly take personal responsibility for information in the bid documentation relating to themselves, their connected parties and their respective companies. Certain types of financial information such as profit forecasts and asset valuations must be supported by directors’ confirmations or third-party reports.

**3. Timetable**

**FRANCE**

Preparation and completion of a voluntary public tender offer takes at least three to four months and can in certain circumstances be longer — in particular in the event where regulatory conditions apply, difficulties are encountered to secure the opinion of the workers’ council or a counter-offer is launched.

After the preparatory work phase, the process starts with the filing by the bidder of the offer and the offer-related documentation with the AMF. Immediately after such filing, the AMF and Euronext Paris publish an announcement regarding the filing of the offer and the trading of the target’s securities is suspended. A press release is also published when the offer is filed with the AMF.

The second step consists of an approval of the terms and conditions of the offer and of the offer-related documents by the AMF within ten trading days of the filing of the offer (the “conformity decision”).

Once the offer-related documentation has been published (within two trading days of the AMF approval), the AMF issues a notice declaring that the offer is “open” for acceptance by the shareholders of the target and announcing the offer’s closing date.
The offer period is usually 25 trading days and may be extended to 35 trading days. If the offer is successful, it is re-opened within 10 trading days of the publication of the outcome of the offer for at least 10 trading days. This theoretical timetable may be affected by several circumstances, such as regulatory conditions or the launch of a competing offer.

The final step of the public tender offer is the publication of the results of the offer by the AMF which takes place within 9 trading days after the closing date of the offer.

**GERMANY**

Illustrative timeline for a voluntary takeover offer:

<table>
<thead>
<tr>
<th>WEEK</th>
<th>7</th>
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<tr>
<td><strong>PREPARATION</strong></td>
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<tr>
<td>Triggering Event</td>
<td>Preparation of Offer Document</td>
<td>Filing of Offer Documents with BaFin</td>
<td>Approval by BaFin</td>
<td>Publication of Offer Document</td>
<td>Announcement of Results</td>
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<td><strong>OFFER PERIOD</strong></td>
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</table>

Sweep-up: Shareholders who did not tender can do so within two weeks of the announcement of the result if the offer closes.

**ITALY**

Illustrative timeline:

- \( T_{0} \): Decision to launch the tender offer
- \( T_{15} \): Execution of the SPA Announcement
- \( T_{25} \): Approval of the tender offer document
- \( T_{30} \): Tender offer period
- \( T_{50} \): Settlement date and delisting
- \( T_{60} \): Sell-out/squeeze-out (if applicable)

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Description</th>
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<tbody>
<tr>
<td>( T_{0} )</td>
<td>Decision to launch the tender offer</td>
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<tr>
<td>( T_{15} )</td>
<td>Execution of the SPA Announcement</td>
</tr>
<tr>
<td>( T_{25} )</td>
<td>Approval of the tender offer document</td>
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<tr>
<td>( T_{30} )</td>
<td>Tender offer period</td>
</tr>
<tr>
<td>( T_{50} )</td>
<td>Settlement date and delisting</td>
</tr>
<tr>
<td>( T_{60} )</td>
<td>Sell-out/squeeze-out (if applicable)</td>
</tr>
</tbody>
</table>

- NDA + Standstill DD + antitrust analysis
- 15 calendar days to review the offeror document (assuming no request for integration)
- 15/25 trading days
- Usually the 3rd trading day following the end of the offering period
- Approximately 30 days
**UNITED KINGDOM**

The timetable of a scheme is not strictly governed by the Code in the same way as an offer: the parties must agree the expected timetable and set it out in the bid document. Unlike in an offer, there is no maximum time limit for the fulfilment of conditions. This reflects the fact that scheme timetables will depend on the availability of court hearing dates. However, the parties can agree conditions to the scheme entitling the bidder to lapse the bid if the target unilaterally postpones certain key milestones in the agreed timetable.

If the bid lapses, the Code prohibits the bidder from launching a new bid for 12 months unless: (i) the new bid is recommended; (ii) the new bid follows an announcement of a competing bid; (iii) where the original bid lapsed by reason of a competition reference, the new bid follows the giving of clearance by the relevant competition authority; or (iv) the Panel determines that there has been a material change of circumstances.

The time it takes to complete a bid depends on a number of factors. The indicative timetable included below assumes that the target’s management is amenable to the bid and that there are no regulatory issues.

<table>
<thead>
<tr>
<th>APPROACH</th>
<th>Informal approach made by bidder’s management (or bidder’s financial advisers) to target management (often to target’s chairperson and/or retained financial advisers).</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATIVE OFFER LETTER</td>
<td>Non-binding (private) indicative offer letter sent to target management, setting out the basic details of the bidder’s indicative offer (including offer price, timing, initial due diligence information requests and any known material conditions to the offer (e.g., competition filings required)).</td>
</tr>
<tr>
<td>DUE DILIGENCE</td>
<td>If the offer price and general nature of conditions are agreed, due diligence on target commences. This generally takes between two and six weeks.</td>
</tr>
<tr>
<td>ANNOUNCEMENT</td>
<td>The public announcement of a “firm intention to bid” is released.</td>
</tr>
<tr>
<td>DOCUMENT</td>
<td>Within 28 days at most, the bid document must be posted to target shareholders.</td>
</tr>
<tr>
<td>NEXT STEPS</td>
<td><strong>Scheme:</strong> shareholder meetings must be held no sooner than 21 days after the bid document is posted; the court approves the scheme approx. 20 days after that; and the court order is filed at the UK Companies Registry, at which point the scheme becomes effective. <strong>Offer:</strong> 60 days after the bid document is posted, the offer must have met its acceptance condition; 21 days after the acceptance condition has been met, all other conditions must have been satisfied or waived (unless the Panel consents to an extension). The offer then becomes wholly unconditional.</td>
</tr>
<tr>
<td>DE-LIST</td>
<td>Target de-listed from the London Stock Exchange (in the case of offers, provided that the bidder has acquired at least 75% of the target’s shares).</td>
</tr>
<tr>
<td>CONSIDERATION</td>
<td>Target shareholders must be paid their consideration within 14 days of the offer becoming unconditional/scheme becoming effective.</td>
</tr>
<tr>
<td>COMPULSORY ACQUISITION</td>
<td>Offers only: once the re-registration of the target as a private limited company has taken place, the compulsory acquisition process (in relation to minority shareholders) may commence shortly thereafter (and takes up to six weeks).</td>
</tr>
</tbody>
</table>
4. Stakebuilding — thresholds for disclosure; mandatory bids

**FRANCE**
The crossing upwards or downwards of 5%, 10%, 15%, 20%, 25%, 30%, one-third, 50%, two-third, 90% and 95% of the share capital or voting rights of an issuer that has securities listed in France, alone or by way of a concerted action, must be noticed to both the target and the AMF before the market or the trading system closes on the fourth trading day after the day on which the threshold is crossed upwards or downwards.

Non-compliance with these requirements may result in a fine and the forfeit of the voting rights held by the shareholder holding in excess of the above-stated thresholds.

The bylaws of the issuer concerned may also provide for additional and lower thresholds (but not lower than 0.5%).

In addition, upon reaching the 10%, 15%, 20% or 25% thresholds, the investor must, within four trading days after the day on which such threshold is crossed declare its intentions toward the issuer for the six-month period following such acquisition. If the objectives of the investor change within the six-month period following the filing of a declaration of intent, a new declaration of intent, duly motivated, must be sent to the company concerned as well as the AMF and must be published in the same way. A new six-month period starts from the date of such new declaration.

Should an investor, acting alone or in concert, directly or indirectly exceed the 30% threshold, it must file a mandatory public tender offer. The filing of a mandatory public tender offer is also required if:

1) a shareholder, or a group of shareholders acting in concert, holding directly or indirectly between 30% and 50% of the issuer’s share capital or voting rights, increase(s) such ownership by at least 1% of the issuer’s total share capital or voting rights over a rolling twelve-month period; or

2) when, as a result of a merger or an asset contribution, a shareholder, or a group of shareholders acting in concert, comes to hold more than 30% of the issuer’s share capital or voting rights.

**GERMANY**
Takeovers in Germany are commonly initiated with the bidder building a stake in the target before initiating the statutory takeover timeline.

If the target has key shareholders, a bidder commonly approaches such shareholders and may request to provide irrevocable undertakings (so-called irrevocables) to tender their shares in a later takeover offer.

The issuer and BaFin must be notified of direct or indirect shareholdings in listed targets exceeding (or meeting or falling below) the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of voting rights without undue delay and within 4 trading days at the latest. The same applies to a holding of instruments with similar economic effect (in particular irrevocables, options, futures and (credit default) swaps), however, starting with a 5% (i.e., not 3%) threshold. Voting rights held by third parties may be attributed to the bidder in particular if held by a party acting in concert with the bidder.

If the bidder’s voting rights reach (or exceed) 10% in the target, it must disclose the aims underlying the purchase of the shares and the origin of the funds used to purchase the shares.

As described above, if the bidder acquires 30% or more of the voting rights in the target, the bidder will be obliged to launch a mandatory takeover offer.

**ITALY**
Building a stake in a listed issuer — through the acquisition of an actual or potential stake or entering into an equity derivatives transaction — is subject to complex disclosure requirements. Disclosure obligations are triggered once a person acquires/holds more than 3% of the voting share capital in an Italian-listed company — or increases its holding above 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of voting rights without undue delay and within 4 trading days at the latest. The same applies to a holding of instruments with similar economic effect (in particular irrevocables, options, futures and (credit default) swaps), however, starting with a 5% (i.e., not 3%) threshold. The disclosure is made to CONSOB and the relevant listed company within five business days of such occurrence (“Actual Holdings”) and are publicly disclosed on the CONSOB website. Notification requirements also arise if the foregoing thresholds are crossed as a result of a reduction of the relevant holding in case of sale of the stake.

Disclosure obligations are also triggered in case of holding of financial instruments (typically options or equity derivatives), which—pursuant to a binding agreement— confer the right to purchase, on the holder’s initiative, ordinary voting shares in a listed company (“Potential Holding”). The disclosure of a Potential Holding is notified to
CONSOB and the relevant listed company within five business days when the Potential Holding exceeds 5%, 10%, 15%, 20%, 25%, 30%, 50% and 66.6%. Notification requirements also arise if the foregoing thresholds might be crossed on the basis of a binding agreement to sale an Actual Holding.

Furthermore, disclosure obligations are also triggered whenever a person holds an aggregate long position that exceeds the thresholds of 10%, 20%, 30% and 50% of the issuer’s voting capital. The “aggregate long position” is the aggregation of positions held by a person through Actual Holdings, Potential Holdings and any other long position, including long positions held through derivatives or other contracts that do not provide for physical settlement but whose return is positively linked to the price fluctuations of the underlying shares (so called cash settled equity derivatives).

A mandatory takeover offer is triggered when a person, by reason of a series of purchases of voting shares, directly or indirectly, or even by acting in concert with other persons, holds more than 30% of the voting share capital, or of the voting rights, in a listed issuer. The relevant threshold is reduced to 25% of the voting share capital, when there are no other shareholders with a higher stake. The obligation to launch a mandatory tender offer on all outstanding shares of the company is triggered when: (i) a person crosses the abovementioned relevant thresholds or (ii) a person owning more than 30% voting rights increases its voting shares of more of 5% in a 12 month period, when there is no other shareholders with an higher stake (incremental mandatory takeover).

The mandatory tender offer must be launched within 20 days of the date on which the relevant threshold is crossed, at a price not lower than the highest price paid by the bidder for any purchase of the company’s shares of the same class during the previous twelve months.

UNITED KINGDOM
Stakebuilding can add credibility to a bid as well as lowering its cost (if shares are bought at a price below the eventual bid price). On an offer (although not a scheme), stakebuilding also increases the chances of securing control (although only those shares acquired after publication of the bid document will count towards the 90% required for compulsory acquisition).

It is usual for confidentiality agreements (usually a prerequisite for due diligence) to include standstill provisions, preventing the bidder from acquiring shares in the target for a specified period of time. If the bidder has inside information on the target (other than the fact of its impending bid), it cannot deal until the information is no longer inside information, has become generally available or a recommended bid is announced. Stakebuilding activities which trigger bid speculation may force up the target share price or trigger an announcement obligation as well as carrying the potential for loss (e.g., if the bid is unsuccessful and no competing bidder arises).

5. Announcement obligations

FRANCE
Any person that is preparing, on its own account, a financial transaction which may have a significant impact on the market price of a financial instrument, or on the financial position and rights of holders of that financial instrument, must disclose the characteristics of the transaction to the public as soon as possible. If confidentiality is temporarily necessary to carry out the transaction and if this person is able to ensure such confidentiality, such person may defer the disclosure.

In cases where the market for the securities of an issuer is subject to large price swings or unusual trading volume, the AMF may require such person to publicly disclose its intentions within a given time frame when there is reason to believe that such person is preparing a takeover bid (i.e., in the event that discussions have started between the issuer and the person concerned and advisors have been appointed). In the event that such person confirms their intention to launch a public tender offer, it must do so in the timeframe determined by the AMF failing which such person cannot launch a public tender offer for a period of six months. In the event that such person declares that it does not intend to launch a public tender offer it is prevented from doing so for a period of six months.

GERMANY
German issuers are generally required to immediately (ad hoc) publish inside information. If the bidder approaches the target before launching the takeover offer, the target’s management will generally be under legal obligation to disclose such approach as inside information. To avoid a disclosure, in practice, a bidder and the target agree on a non-disclosure agreement under which the target agrees to make use of available exemptions from its ad hoc disclosure obligations to the extent legally permissible.
Once the bidder has finally decided to make a takeover offer it must publish this decision with undue delay. As described above, this will trigger the commencement of the statutory takeover timeline.

ITALY
Any decision to launch a takeover — which is irrevocable — must be promptly announced to the public and CONSOB. Therefore, the signing of any agreement — written or even not-written — which determines the change of control in a listed issuer (e.g., agreement to buy, or the undertaking to buy, a stake which triggers a mandatory takeover, or the agreement whereby a person or a group of persons/shareholders are acting in concert to gain or acquire, or undertake to acquire, a controlling stake in a listed issuer) triggers the obligation to announce the launch of a takeover bid.

UNITED KINGDOM
The Code requires certain public announcements to be made by the parties during the course of a bid. If a potential bid leaks to the market (i.e., the target is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds to conclude this is a result of the potential bidder’s actions), a “possible offer” announcement may be required. This must usually identify the potential bidder and will commence a 28-day time period within which the bidder must either announce a “firm intention to bid”, or withdraw (in which case it will usually be precluded from bidding for six months).

If and when a bidder has decided to proceed with a bid, it must announce a “firm intention to bid”. This announcement should only be made when a bidder has every reason to believe that it can and will continue to be able to implement the bid.

Secrecy is a fundamental principle of the Code. Before the announcement of a bid or possible bid, the Code requires that anyone in possession of confidential information, particularly price-sensitive information, regarding a bid must treat that information as secret and must only disclose it to others where necessary and if the recipient is made aware of the need for secrecy. The Panel must be consulted if more than six external parties are to be approached about a bid.

6. Certain funds requirements

FRANCE
Under French law, public tender offers are irrevocable. This has a number of implications including, in particular, that only a limited number of regulatory conditions are deemed as acceptable conditions (i.e., approval of certain antitrust authorities which do not include the MOFCOM and approval by the French Ministry of the Economy for investments in strategic sectors or competent authorities for certain regulated activities) and that public tender offers must be fully financed and cannot be subject to any financing condition when they are launched.

The irrevocability of the offer is secured through a guarantee of the bidder’s investment bank which countersigns the offer documentation and guarantees the obligations of the bidder.

GERMANY
If, as in most cases, the bidder offers a cash consideration an investment services enterprise (Wertpapierdienstleistungsunternehmen) that is independent from the bidder must confirm in writing that the bidder has sufficient cash available (assuming an acceptance rate of 100%).

For an exchange offer, the bidder must prove to the BaFin that it has or will have the shares to settle the offer.

ITALY
Upon announcement of the takeover, the acquirer has to provide the Italian regulator with a cash confirmation granted by a major bank to prove certainty of funds for the acquisition of any tendered shares in the context of the tender offer. Therefore, before any announcement of the takeover, the acquirer should have in place an appropriate agreement with financing bank, such detailed and unconditional commitment papers or a proper loan/bridge loan agreement.

UNITED KINGDOM
The Code does not regulate the type of consideration or the price offered on a bid, although the same consideration must generally be offered to all shareholders. Where a bidder acquires any interests in a target carrying 10% or more of the voting rights of a particular class of share during the offer period or within (i) 12 months prior thereto for
cash, an offer of cash must be made, or cash alternative provided; and/or (ii) 3 months prior thereto in exchange for securities, an offer of securities is normally required. The bid price must not be on less favourable terms than the price paid by the bidder for an interest in target shares in the three months before the offer period or during the period between the start of the offer period and the announcement of a “firm intention to bid”.

The “firm intention to bid” announcement must include a “cash confirmation” from the bidder’s financial adviser confirming that the bidder has the resources available to satisfy full acceptance of the bid. The party making the cash confirmation may be required to produce the cash itself if the bidder does not have the resources available. A financial adviser will therefore engage legal counsel to investigate the bid funding structure so that it can demonstrate it acted reasonably in giving the cash confirmation. The bidder should therefore work on the basis it will be necessary for resources to be available prior to announcement which provide “certain funds” (i.e., no conditions precedent to drawdown which render the ability of the bidder to draw the funds uncertain) for such a period as to allow the bidder to pay the bid consideration to target shareholders.

On the sale of shares in a UK incorporated company, UK stamp duty/stamp duty reserve tax will generally arise at the rate of 0.5% of the consideration for the transfer.

7. Deal protection measures

FRANCE

Break fees can be agreed under French law. They can either be agreed with significant shareholders which have undertaken to contribute their securities to the tender offer or directly with the target.

The principle under French law is that break fees should be of a reasonable amount and such that they do not prevent a counteroffer from being launched. In practice, and although French law does not provide for any specific amount, break fees agreed to by a target are considered reasonable when amounting to 2% or less of the price of the target.

GERMANY

Break fees payable by the target are not a common feature in the German takeover practice. Although there is no explicit prohibition of break fees, there is legal uncertainty on their general permissibility and permitted terms and conditions. However, if the takeover offer is in the best interest of the target and the amount of the break fee is appropriate (e.g., 1% of the transaction value) the break fee may be considered as permitted as no de facto commitment of the target’s supervisory board and its shareholders may be caused by the break fee.

ITALY

As a general rule, a mandatory takeover cannot be subject to conditions. The obligation to launch a tender offer on all outstanding share capital of the target is provided by the law and is irrevocable. However, the purchase agreement triggering the obligation to launch a tender offer can be subject to condition(s) such as the release of the relevant approval(s) by any competent antitrust authority/ies and/or by any competent authority which must authorise the purchase pursuant to applicable laws. In such circumstances, the announcement to the public would be as well subject to the same conditions indicated above and the launch of the tender offer is subject to the occurrence of the relevant conditions.

In case of a voluntary takeover bid, the offer can also be subject to the condition of a minimum number of voting shares to be tendered into the offer. As a general rule, if the bidder is aiming to delist the target, the minimum number of shares to be tendered is 66% of existing and voting share capital. A holding of 66% would allow the bidder to control the voting decisions at the level of the extraordinary shareholders meeting of target.

UNITED KINGDOM

Certain deal protection mechanisms in favour of bidders (known as “offer-related arrangements”), such as break fees, exclusivity, “no-shop” agreements, matching rights and restrictions on the target changing its recommendation, are largely prohibited under the Code. However, before announcing its bid, a bidder may seek to obtain legally binding irrevocable undertakings from key shareholders and, in a recommended bid, target director shareholders to accept an offer or to vote in favour of a scheme. These undertakings can be: (i) “hard” (i.e., fall away only on completion of a rival bid); (ii) “semi-hard” (i.e., fall away only if a bid at least [x]% (often 5 or 10%) higher emerges); or (iii) “soft” (i.e., fall away if a higher bid emerges or if the proposed bid is no longer recommended). There are Code limitations on the timing and nature of approaches to shareholders for irrevocable undertakings and on the number of shareholders that can be approached.
Once it has been approached, the target board is prohibited, other than with the consent of target shareholders, from taking any action which could frustrate a bid (e.g., by issuing shares or rights over shares, agreeing material transactions or entering into contracts that are not “ordinary course”). Target defensive measures are therefore largely restricted to the target persuading shareholders that the bid undervalues the company and regulatory authorities to withhold consents required for the bid to proceed.

8. Compulsory purchase/squeeze-out

FRANCE
A shareholder owning 95% of the shares and voting rights of an issuer that has securities listed in France may implement a squeeze-out (“retrait obligatoire”) to acquire the remaining securities of the target and secure the ownership of 100% of the share capital and voting rights of the issuer.

When implemented after a public tender offer, the squeeze-out must be implemented within three months after the closing of such public tender offer. In such a case, and to the extent the squeeze-out includes the cash settlement proposed in the public tender offer, the implementation of the squeeze-out does not require a specific approval from the AMF. In the event where the squeeze-out is not launched within three months of the closing of the preceding offer an independent expert will have to deliver a fairness opinion for the squeeze-out to take place. In any case, a bidder wishing to eliminate minority shareholders should inform the AMF upon filing of its initial public tender offer that it intends or reserves the right to implement a squeeze-out.

The merger can also be used as a mean to carry out a squeeze-out in the event where the bidder does not hold 95% of the share capital and voting rights of the target. As set out above, a merger will however require a shareholders’ meeting and must be approved by a two-thirds majority of shares present or represented.

GERMANY
German law provides for three squeeze-out procedures. If the investor acquires 95% of the share capital in connection with a takeover offer, a takeover squeeze-out can be implemented simply by applying for an according court decision. If 90% of the share capital has been tendered under the takeover offer, the offer price is regarded as adequate compensation for the remaining minority shareholders.

A so-called regular squeeze-out is implemented by way of a resolution of the target’s general meeting. In order to initiate this process, the investor has to hold directly or indirectly at least 95% of the share capital.

In addition, a squeeze-out can be implemented with a participation of only 90% if the squeeze-out is performed in connection with an upstream merger of the target onto another German stock corporation (AG) (or partnership limited by shares (KGaA) or Societas Europaea (SE)), which is why in a takeover scenario the acquisition vehicle is typically a German stock corporation (AG).

ITALY
A bidder holding more than 90% of a class of voting shares at completion of a tender offer has the obligation to purchase any share upon request of any holder (so called sell-out procedure), unless the bidder has undertaken the obligation to restore an adequate free float within 90 days from the end of the tender offer.

The squeeze-out is instead triggered when an at completion of the tender offer the bidder holds at least 95% of the shares and the bidder has the right to purchase all outstanding shares at the price of the tender offer.

UNITED KINGDOM
Following a takeover offer for a UK company, the right of the bidder (under section 979 of the Companies Act 2006) to acquire minority shareholdings on a compulsory basis if it has acquired or unconditionally contracted to acquire not less than 90% in value of the shares to which the takeover offer relates and not less than 90% of the voting rights carried by the shares to which the offer relates. Any minority holder has the right to require the bidder to buy his shares at the offer price if the bidder has obtained 90% of both the issued shares and the voting rights in the company. Where compulsory acquisition does not become available, the bidder will need to rely on another method of removing the minority, including a court-sanctioned scheme of arrangement or for the bidder to arrange for the target’s operating subsidiaries to be sold to a company within the bidder’s group with a subsequent member’s voluntary liquidation and return the money realised to the target’s shareholders.
9. De-listing requirements

FRANCE
In France the de-listing of an issuer’s shares is automatic after a merger or a squeeze-out process.

An issuer may also apply for de-listing of its shares outside a merger or squeeze-out process by launching a simplified public tender offer of such shares in cash or with a cash option (the “delisting offer”) to the extent:

- it provides evidence that the offeror holds upon the delisting application at least 90% of the voting rights attached to the issuer’s shares;
- it provides evidence that over the last 12 months before the delisting application, the total value traded on the issuer’s shares represents less than 0.5% of the issuer’s market capitalization;
- it files the application after a period of 180 days has elapsed since any previous public tender offer (i.e., prior to the de-listing offer); and
- it provides evidence that the offeror has committed, for a period of 3 months following the end of the de-listing offer, to acquire at the same price as such de-listing offer the shares of remaining shareholders who have not tendered them under the de-listing offer and undertakes certain other commitments meant to protect the interest of minority shareholders.

GERMANY
A formal de-listing generally requires an application of the management board of the target (often with the consent of the supervisory board) to the respective stock exchange accompanied by a tender offer by the majority shareholder(s) to minority shareholders. A shareholder resolution is (no longer) required.

Such tender offer must in particular be free of any conditions (including antitrust clearance or a requirement to acquire a minimum percentage of shares) and minimum pricing differs from the WpÜG takeover provisions, which is why a previous voluntary takeover offer will in most cases not be appropriate to be used as de-listing takeover offer.

ITALY
The de-listing is declared by the Italian stock exchange (i) at the completion of a successful takeover, once the sell-out and squeeze-out procedure are completed or, more generally, (ii) when the listed shares are not actively traded for a certain period of time.

In case the sell-out and squeeze-out procedures cannot be triggered because the bidder acquired less than 90% of the share capital of target upon completion of the tender offer, the de-listing can also be achieved by merging a non-listed company (i.e., BidCo) with a listed target company and the merger is a direct merger where the non-listed company will be the surviving company at completion of the merger. The merger is resolved upon by a resolution of the extraordinary general meeting (“EGM”) of the merging companies (i.e., a 66% majority is required) and once the merger is legitimately approved by the EGM, the de-listing of the target is completed. Upon de-listing, any absent, abstaining or dissenting shareholders at the EGM approving the merger have the right to withdraw (i.e., exit) from the company, which has the obligation to purchase the shares of any withdrawing shareholders at a price equal to the average market price of the shares over the previous six-month period from the date of the notice of call of the EGM.

UNITED KINGDOM
For a takeover transaction executed by way of scheme of arrangement or takeover offer where more than 75% of the outstanding shares of the target company are obtained, a de-listing from the London Stock Exchange (including both main market and AIM) is a straightforward process, requiring approval of 75% of the shares outstanding if a group of minority holds remain post-transaction. The UK Financial Conduct Authority’s listing rules for companies on the main market of the London Stock Exchange and the AIM rules for Companies require a minimum of 25% of a company’s outstanding shares to be held by the public in order for the shares to be admitted to listing and trading, and will require de-listing to occur if this “free float” threshold is not maintained.
II. RECENT ACTIVITIES AND TRENDS IN CHINA OUTBOUND INVESTMENT

1. Statistics of recent Chinese investments/notable transactions

FRANCE

In 2014, Chinese investments in France represented 1% of foreign investments in France. China was the ninth leading investor in France with 37 investments. The perfumes and cosmetics industry was the most popular sector for Chinese investors. Chinese investments represented 31% of all foreign investment in this sector in France.

In 2015, the part of the Chinese investments in France grew significantly to 44 investments projects and represented 2% of all foreign investments in France, for a global amount of €2.8 billion in foreign direct investment. Among notable investments in 2015 are the acquisition of Club Med, the privatization of the Toulouse Airport, Eye Tech Care SA, Laboratoires Vivacy SAS, Orrion chemicals, Infront Sports & Media AG, Louvre Hotel and the setting-up of Jin Jang in France. In 2015, France represented the second European country for Chinese investments, with 16% of Chinese foreign direct investment to Europe located in France.

2016 follows the same trend with a number of significant Chinese investments in France such as investments in AccorHotels, SGD Pharma or Sandro, Maje and Claudie Pierlot. During the first half year of 2016, Chinese investments represented twice the amount of full year 2015.

GERMANY

Germany’s share in China outbound investment has seen a major rise in recent years, as Germany offers advanced technologies, know-how and intellectual property and is often used as a gateway to the European single market.

Within the first two quarters of 2016 only, Chinese investors have made 37 acquisitions of German companies, already equalizing the level of 2015 (39 acquisitions).

Notable transactions in 2016 include Fosun’s acquisition of Hauck & Aufhäuser, a German private bank (volume €210 million), Fujian Grand Chip’s takeover of Aixtron, a manufacturing company in the semiconductor industry (volume €670 million), Midea’s takeover of KUKA, a manufacturer of industrial robots and solutions for factory automation (€3.3 billion) and ChemChina’s takeover of KraussMaffei Group, a machine manufacturer (€925 million).

ITALY

In the last three years, 2014-2016, 50 transactions were completed for an aggregate value of US$15.99 billion. In particular, in 2016 Chinese investors completed 15 transactions for an aggregate amount of US$1.35 billion. Most notable transactions: the acquisitions of two major football clubs A.C. Milan by State Development & Investment Corporation and F.C. Internazionale by Suning.

In 2015, Chinese investors completed 19 transactions for an aggregate amount of US$11.17 billion. Most notable transactions: Pirelli by ChemChina; Giochi Preziosi (a major European toys manufacturer/retailer) by Oceanic Gold Global Limited and the acquisition of two significant stakes by The People’s Bank of China in the two biggest Italian listed banks Intesa and Unicredit.

In 2014, Chinese investors completed 16 transactions for an aggregate value of US$3.47 billion. Most notable transactions: Ansaldo Energia by Shanghai Electric Group Company Limited; Krizia S.p.A. (luxury fashion) by Shenzhen Marisfrolg Fashion Co., Ltd. and the acquisition of two significant stakes by The People’s Bank of China in two major Italian-listed companies Mediobanca (the oldest and most powerful Italian independent investment bank) and Saipem (a sizeable privatized oil and gas company).

UNITED KINGDOM

In the first three quarters of 2016, Chinese investors have made 26 acquisitions of UK companies with an aggregate deal value of €4.7 billion, double the value of such deals in the whole of 2015. In the last four years there have been almost 100 Chinese investments in the UK with a total value exceeding €15 billion.

The real estate, healthcare and leisure sectors have been particularly attractive to Chinese investors in recent months. Notable deals have included Dalian Wanda’s acquisition of Odeon & UCI Cinemas; Creat Group’s acquisition of Bio Products Laboratory, a leading biotherapeutics company, and China Everbright’s acquisition of a majority stake in media rights agency MP & Silva. China General Nuclear’s agreement in September to take a 33% stake in Hinkley Point C nuclear power station in Somerset, England alongside the French energy group EDF is also noteworthy.
2. Transaction trends

FRANCE
Given the importance of certainty of the transaction for sellers reverse break-up fee are now often encountered in transactions involving investors which are subject to domestic regulatory constraints which may delay of prejudice the completion of a transaction. This is in particular the case in the event of competitive auction processes involving Chinese investors.

GERMANY
The German public takeover practice in 2016 is characterized by takeovers with a clear focus on deal certainty. This is reflected by a rise of key shareholders issuing irrevocables and investors offering high premiums. In addition, investment or business combination agreements (BCA) are more and more common, in which the takeover and post-takeover measures are agreed with the target. For example, Midea agreed in its investment agreement with KUKA (i) to guarantee jobs through 2023, (ii) not to pursue a domination agreement or a de-listing, (iii) to keep KUKA's headquarters in Augsburg, Germany, and (iv) to keep patented information in Germany.

ITALY
It is increasingly common for sellers to negotiate safeguards to deal with regulatory risks, shifting them, in full or in part, on to the buyers. Examples are reverse break-up fees, “hell or high water” provisions or ticking fees.

UNITED KINGDOM
The scheme of arrangement has become the more common deal structure for UK public M&A, particularly for larger value, recommended bids, since it has the advantage that all shareholders will be bound by the scheme if it is approved. There continues to be a prevalence of overseas buyers, predominantly paying cash consideration.

Uncertainty created by the UK’s vote to leave the EU in June and other potential macro headwinds look likely to have an impact on bid activity for some time. However, the recent drop in sterling means some companies have become significantly more attractive from a pure market capitalisation basis so there are real opportunities for the right purchaser.

Endnotes
1 Law Decree No. 21 of 15 March 2012, as amended and ratified by Law No. 56 of 11 May 2012 (the “Golden Power Law”), as further implemented by a series of recently enacted decrees (the “Decrees”). The Decrees identify the strategic assets which should be subject to the golden powers (e.g., telecommunications, energy, defence, aerospace and certain infrastructure).
2 CONSOB is the surveillance authority on investment firms, the stock exchange and listed companies.