

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



OICU-IOSCO

**EMERGING MARKETS COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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Introduction

The first version of this report was prepared by the IOSCO EMC Working Group 4 on Enforcement and Exchange of Information and endorsed by the IOSCO Emerging Markets Committee during its 4 April 2005 meeting.

Its key objective is to provide a comparative analysis of the existing regulatory frameworks for the acquisition of substantial blocks of shares and takeovers of public companies in the jurisdictions of some IOSCO EMC members.

Currently the Polish Financial Supervision Authority together with the Capital Markets Board of Turkey decided to organise the IOSCO EMC Working Group 4 Seminar on Enforcement Aspects of Takeover Regulation in Istanbul, Turkey. Since the Seminar will be an occasion to present a *Report on Takeover Regulation in the Jurisdictions of some IOSCO EMC Members*, as well as the opportunity to present diverse points of view and discuss challenges connected with takeover regulation worldwide, Working Group 4 has decided to prepare an update of the report.

1. General Remarks

1.1 Scope of the research

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

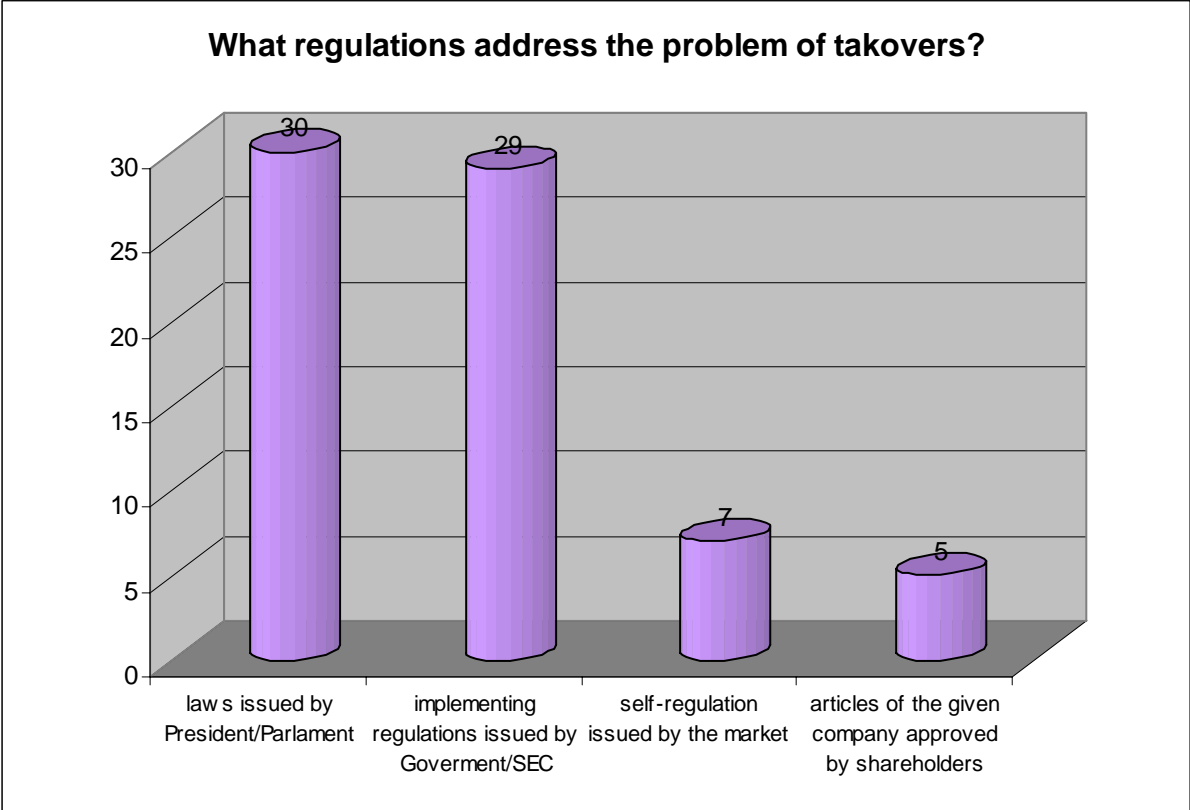
1.2 Authority responsible for takeovers

In most jurisdictions the authority responsible for the regulation of takeovers of listed companies is a government body designed solely for the supervision of capital markets. However, eleven jurisdictions have adopted an integrated supervisory model for the financial sector (Bolivia, Bulgaria, Chile, Colombia, Hungary, Republic of South Korea, Malta, Mauritius, Poland, Chinese Taipei and Uruguay). None of the surveyed jurisdictions has a separate authority designed to exclusively deal with takeovers.

1.3 Form of regulation

The most common way of regulating takeovers on a public capital market is through duly adopted legislation and by implementing regulation put in place by the government or the government securities regulator (hereinafter referred to as SEC). Eight jurisdictions have implemented a broader regulatory model that includes self-

regulatory measures set by the markets and company decisions duly approved by the shareholders within the framework of company law (Albania, Barbados, Hungary, Jordan, Malta, South Korea, Philippines, Chinese Taipei). It was found that there is no specific regulation for takeovers in two jurisdictions (Bolivia and Uruguay).



2. Investor disclosure obligations

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

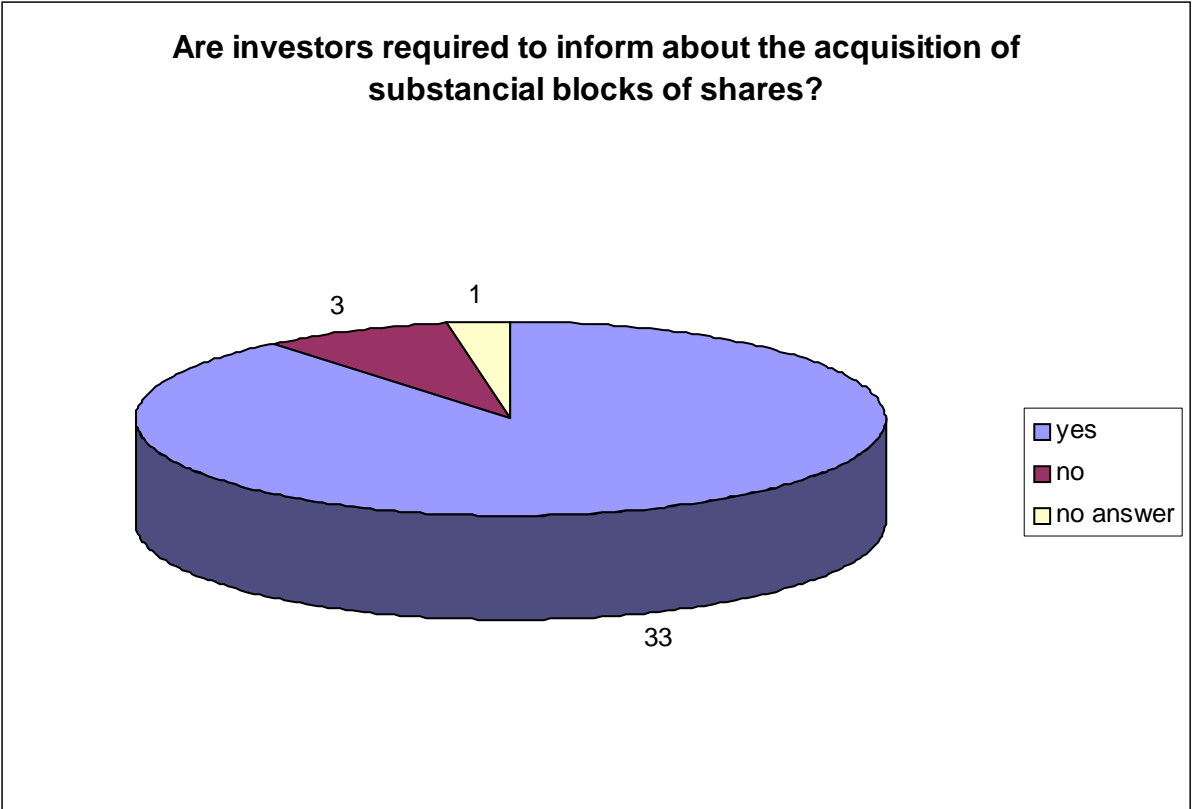
In almost all of the surveyed jurisdictions an investor acquiring a substantial block of shares in a publicly traded company is required to disclose the transaction.

In Chile investors representing more than 10% of voting shares are required to inform through the company, even tough there are no specifications in relation to the size of transactions. Also when a change of control is involved or an acquisition of more than 5% of voting shares is taking place, the company is required to inform.

In Montenegro the issuer is not obliged to inform about acquiring or disposing of voting rights, but the Central Depository Agency which keeps the register of all securities issued in Montenegro.

In Oman any person who owns individually or together with his minor children shares amounting to 10% or more of the shares of any joint stock company, must promptly notify the Authority of the same in writing and shall inform the Authority of any dealings or transactions carried out which lead to the increase of such percentage. Should a person or a number of related persons owning 15% of the shares of a joint stock company whose shares were offered for public subscription wish to dominate the company by owning 35% or more of the issued shares, then such person or persons should notify the Authority of the same through the Executive President prior to such purchase. Should the Board consider such domination or ownership not to be in the interest of the national economy, then such person and its Brokers shall be advised to refrain from such purchase, failing which the matter shall be referred to the Cabinet of Ministers to take the appropriate decision. The above provision shall also apply in the event that the shares are transferred to one or more related persons by means of grant, inheritance or will. Should the subject matter of domination or ownership be a bank or establishment which exercises banking business, then the prior consent of the Central Bank of Oman must be obtained in accordance with the provisions of the Banking Law.

In Venezuela any investor called "Initiator", pretending to acquire shares or securities which entitle to a vote right, that allow to acquire, complete or increase a Significant Share Ownership, or to acquire, consolidate or increase a Political Majority Control, through one act or several consecutive acts, is compelled to notify the Comisiòn Nacional de Valores, and submit a Report before the offer goes public, so the CNV can determine the publicity means and the terms of the Tender Offer. The Report should include a summary, the initiator's general and financial information, the offer purpose, the initiator's share ownership, the initiator's relations with the company, and the offer's special conditions.



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

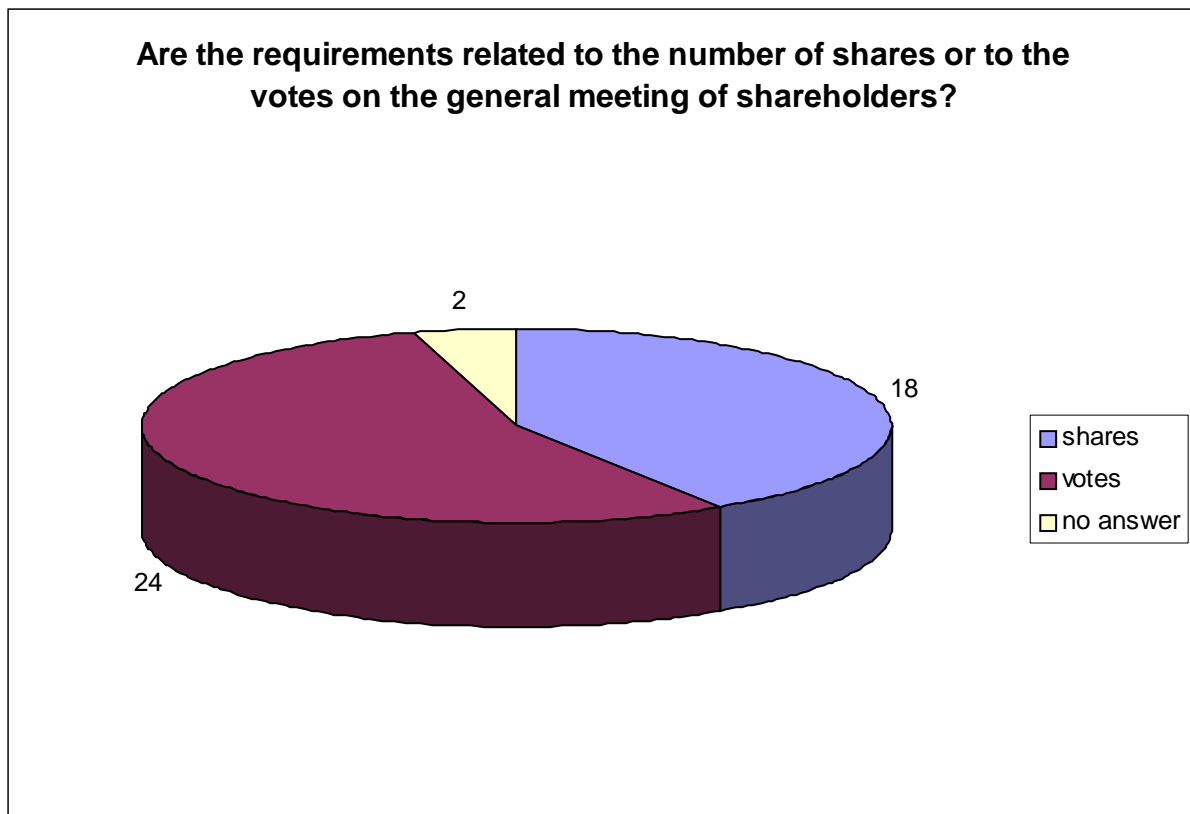
In a slight majority of the surveyed jurisdictions, disclosure requirements are related to the number of votes at the general meeting of shareholders (hereinafter referred to as the GMS).

In China each company share can only hold one vote.

In Brazil, China, Colombia, Jordan, Malta, Nigeria, Oman, Slovenia, Chinese Taipei, Thailand and Vietnam disclosure requirements are related only to the number of shares.

In Albania, Argentina, Bulgaria, Chile, Croatia, Czech Republic, Hungary, India, South Korea, Lithuania, Former Yugoslav Republic of Macedonia, Malaysia, Mauritius, Poland, Romania and South Africa disclosure requirements are related only to the number of votes.

In Barbados, Egypt, Pakistan, Philippines, Sri Lanka, Turkey and Venezuela both the number of votes and the number of shares held must be disclosed. It is interesting to note that in the Philippines the number of shares held must be disclosed for a tender offer while the number of corresponding votes is the information that must be disclosed for a merger or for a consolidation.



2.3 The disclosure thresholds

Basically there are two systems of disclosure thresholds:

2.3.1 multiple fixed thresholds (Albania, Argentina, Brazil, Bulgaria, Chile, Colombia, Egypt, Jordan, South Korea, Former Yugoslav Republic of Macedonia, Malaysia, Mauritius, Nigeria, Thailand - 5%; Hungary, Slovenia - 5% and a subsequent multiple of 5%; Oman, Sri Lanka, Chinese Taipei, Venezuela - 10%; Croatia - 10%, 25%, 50% or 75%; Czech Republic - 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 1/3, 40 %, 45 %, 50 %, 55 %, 60 %, 2/3, 70 %, 75 %, 80 %, 90 %, 95 %; India - 5%, 10%, 14%, 54% and 74%; Lithuania - 10%, 20%, 25%, 33%, 50%, 66% or 75%; Montenegro - 10%, 20%, 33%, 50%; Pakistan - 10% and 25%; Philippines - 5% for narrative and more comprehensive disclosures and 10% for quantitative presentation; Romania - 5%, 10%, 20%, 33%, 50%, 75% and 90%; Turkey - 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 or 75%);

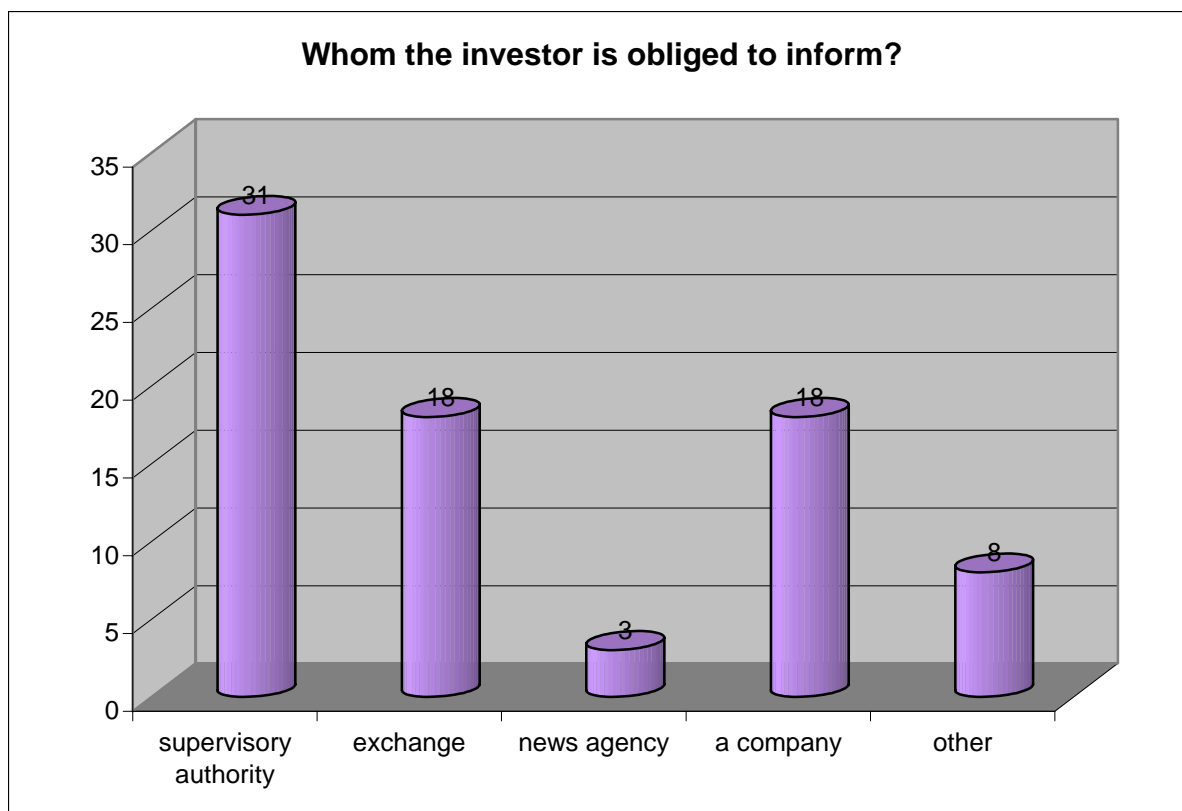
2.3.2 one or a few fixed thresholds and, after achieving specified thresholds, further disclosure obligations arising upon the acquisition or the selling of shares representing specified number of votes at the GMS (Barbados - the general threshold is 25% of the equity but a shareholder who owns 10% of the shares in a listed company shall declare every trade within one week; China - 5% and 1% up and down when a shareholder holds more than 5%; Poland - any investor (entity) which has achieved or exceeded 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total vote in a public company, or held at least 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total

vote in a public company, and as a result of a reduction of its equity interest, holds 5%, 10%, 20%, 25%, 33%, 50% or 75% or less of the total vote, respectively – shall notify the Commission and the company of the fact within four days from the date of a change in such shareholder's share in the total vote; Vietnam – 5%, 10%, 20% and for transactions to increase or reduce ownership above this level).

2.4 The investor's obligation to inform market participants

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

- (a) the investor must notify the exchange (Albania, Argentina, Barbados, China, Croatia, Egypt, India, South Korea, Malaysia, Mauritius, Pakistan, Philippines, Romania, Sri Lanka, Thailand, Turkey, Vietnam);
- (b) the investor must notify a news agency (China, Former Yugoslav Republic of Macedonia, Pakistan);
- (c) the investor must notify the company (Barbados, Brazil, Bulgaria, China, Croatia, Czech Republic, India, Hungary, Lithuania, Former Yugoslav Republic of Macedonia, Malaysia, Pakistan, Philippines, Poland, Slovenia, Sri Lanka, Turkey);
- (d) in Czech the investor must to notify The Securities Centre
- (e) in Montenegro the investor must notify the issuer
- (f) in Pakistan the investor must notify the existing minority shareholders



2.5 The disclosure deadlines

The time period for the disclosure varies in the surveyed jurisdictions from immediately to a period of several days after the acquisition or disposal of shares: Albania, Argentina, Brazil, Former Yugoslav Republic of Macedonia, Mauritius – immediately; Barbados – 24 hours; China – 2 or 3 days; Egypt, Pakistan, Sri Lanka – 2 days; Czech Republic, Romania, Vietnam – 3 working days; Slovenia – 3 days maximum; Hungary – 2 calendar days; Croatia – 15 days; Jordan, Lithuania, Malaysia, Montenegro – 7 days; Bulgaria, Poland – 4 days; South Korea – 5 business days; Thailand – next business day; Turkey – the next working day until 9.00 a.m.; Columbia – before and after.

In the Philippines the supervisory authority must be informed within 5 business days when the 5% threshold is reached and within 10 days for the 10% threshold while the related company must be informed within 5 business days in every case.

In Venezuela, the investor has to submit a report to the supervisory authority 5 working days prior to the initiation of a public offering so that the supervisory authority can define the terms of a tender offer, including the related publicity.

2.6 Requirements related to an acquisition and a disposal of shares

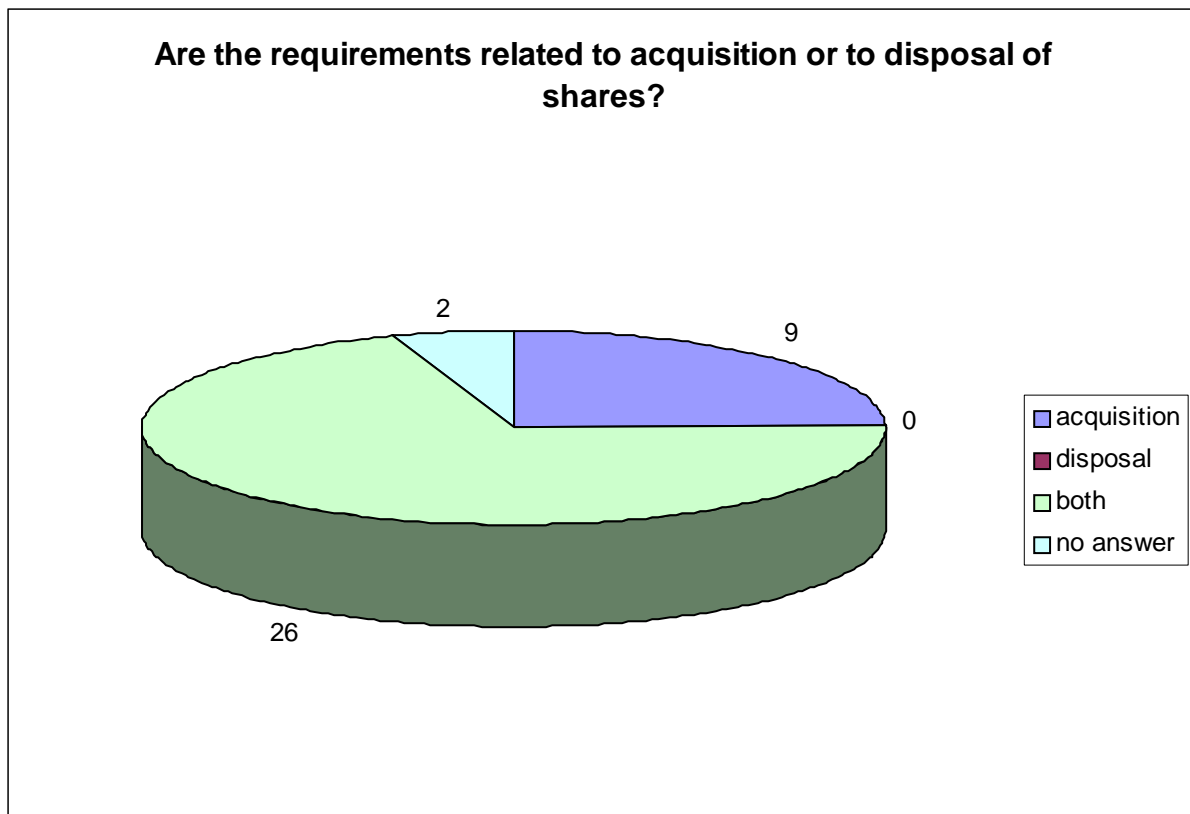
In most of the surveyed jurisdictions, the investor disclosure obligations are related to both the acquisition and the disposal of shares. However, in Chile, Egypt, Jordan, Mauritius, Nigeria, Oman, Pakistan, Slovenia and Sri Lanka the investor only has to disclose the acquisition of shares.

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

In Philippines both the seller and purchaser are required to submit within the prescribed periods their disclosure on the disposition and acquisition of securities, respectively.

In South Africa where a company disposes its shares in another company, the shares, which constitute more than the major assets or business undertaking of the disposing company, the company doing the disposal is obliged to inform its shareholders and get their approval for such a disposal. Where there is an acquisition, Rules 2.3 under section D and Rule 8 under section F of the Code may be applicable as described under par 1 above.

In Sri Lanka any person or persons acting in concert with such person who acquires or holds ten per centum or more of the shares or voting rights of a company shall report their holdings to such company, the Commission and the Stock Exchange within two market days of such acquisition.



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

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

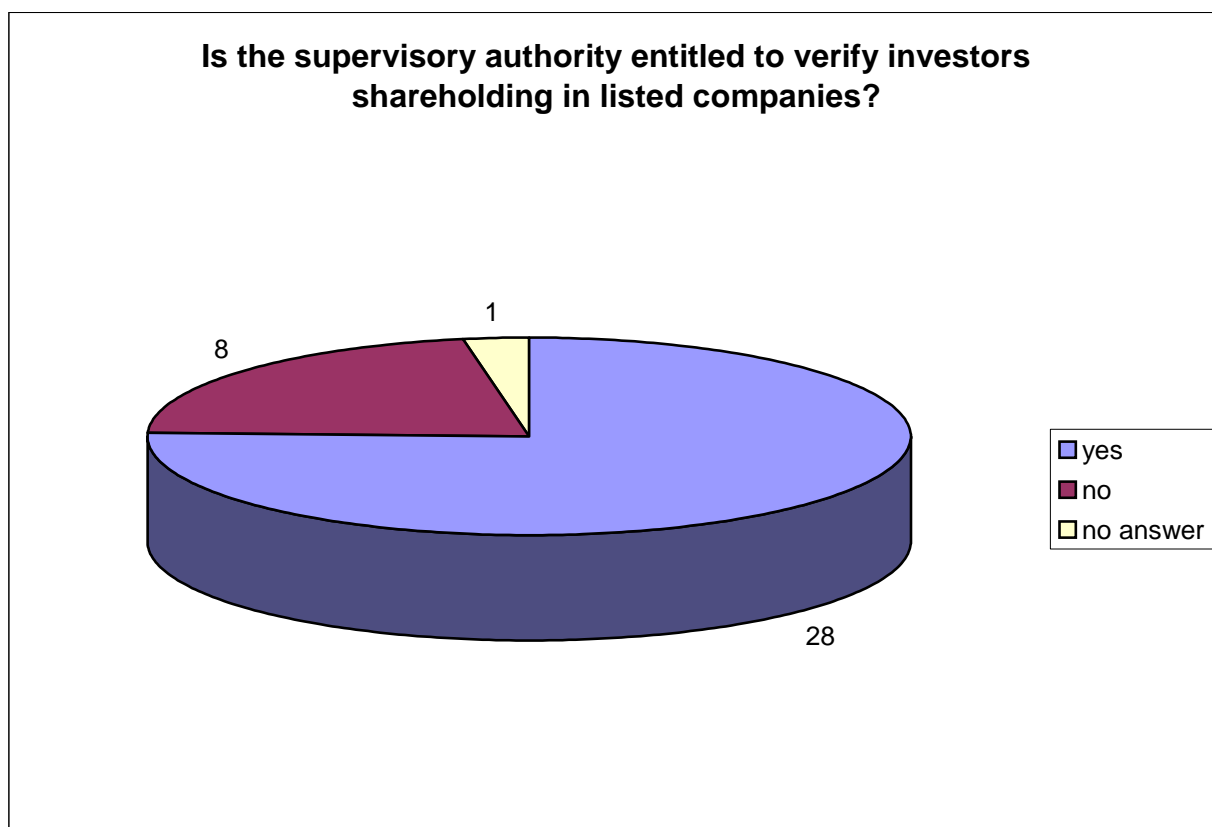
- (a) inability of up to 5 years to become a corporate officer, suspension of up to 2 years to publicly offer securities or prohibition to publicly offer securities (Argentina);
- (b) a suspension or a temporary disqualification from assuming managing responsibilities within a company and a prohibition to operate in the securities market (Brazil);
- (c) the clearing house will not transfer shares under the name of a sanctioned person, who will also be prevented from using his voting rights to nominate company directors (China);
- (d) if a considerable material gain has been realized or considerable damage occurs to a third party because of a related criminal offence, the offender is subjected to a fine representing at least 250 days of income or up to three years of imprisonment (Croatia);
- (e) in the event that the notification and publication do not take place, no membership rights can be exercised towards the company until the notification obligation has been fulfilled (Hungary);
- (f) an advisory opinion for the removal of officers, a warning or caution, imprisonment of one year or less (South Korea);

- (g) a person who fails to fulfil the obligation within a set term, for two years from the moment of submission of correct data, shall lose the right to hold at general meetings of the issuer's shareholders more votes than the last threshold about which he has duly informed. Moreover, all decisions adopted during the period between the acquisition of the share holding and the moment of correct information disclosure may be annulled following judicial procedure if the issuer's managers have been changed or property or non-property rights of shareholders have been violated by these decisions (Lithuania);
- (h) if the person having in its possession a qualified shareholding fails to notify the issuer and the Commission in compliance with Article 64 hereof, it shall not be entitled to vote, i.e. to participate in the management of the company-issuer of such shares on the basis of the ownership of shares in excess of the qualified shareholding (Former Yugoslav Republic of Macedonia);
- (i) the infringing party may be banned from practicing his business or prohibited from practicing the activity, being the subject matter of the offence, for a period not exceeding three years. If the same act is repeated then a judgement resulting in the same penalty is mandatory (Oman);
- (j) the acquirer and any person acting in concert shall stand debarred as acquirer for next 3 years (Pakistan);
- (k) a shareholder shall not exercise voting rights conferred by shares in a public company, which are the subject of a legal action or other legal event as a result of which the shareholder will reach or exceed a given threshold of the total vote in breach of the notifying obligations (Poland);
- (l) suspension of authorisation, withdrawal of authorisation, temporary prohibition from carrying out certain activities and services which are subject to this law (Romania);
- (m) if the persons who are holders of a qualified stake do not notify the issuer and the Agency in accordance with the preceding article, they shall not have the right to vote, i.e. to participate in the management of the company/issuer of these shares, with the shares that exceed the qualified stake (Slovenia);
- (n) any person who is found guilty of an offence for which no penalty is expressly provided for under the SEC Act, shall be liable on conviction after summary trial by a Magistrate to imprisonment of either description for a period not exceeding five years (Sri Lanka);
- (o) failure to disclose about such changes in shareholding information shall be liable to a maximum of imprisonment for a term not exceeding two years (Thailand);
- (p) the acquiring investor will not be able to exercise the voting rights related to the shares bought in contravention to the law and all the decisions that may have been made through the use of the related voting rights will be null and void (Venezuela);
- (q) the shares bought without proper notification need to be sold (Vietnam).

In Montenegro there is no sanction prescribed by the Law.

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

Most of the supervisory authorities in the surveyed jurisdictions are entitled to verify investors' shareholdings in listed companies through detailed record inspections. However, in Lithuania, Former Yugoslav Republic of Macedonia, Malta, Montenegro, Slovenia, Turkey, Uruguay and Vietnam the authorities are not allowed to check investors' shareholdings.



2.9 Regulation concerning capital groups and market participants acting in concert

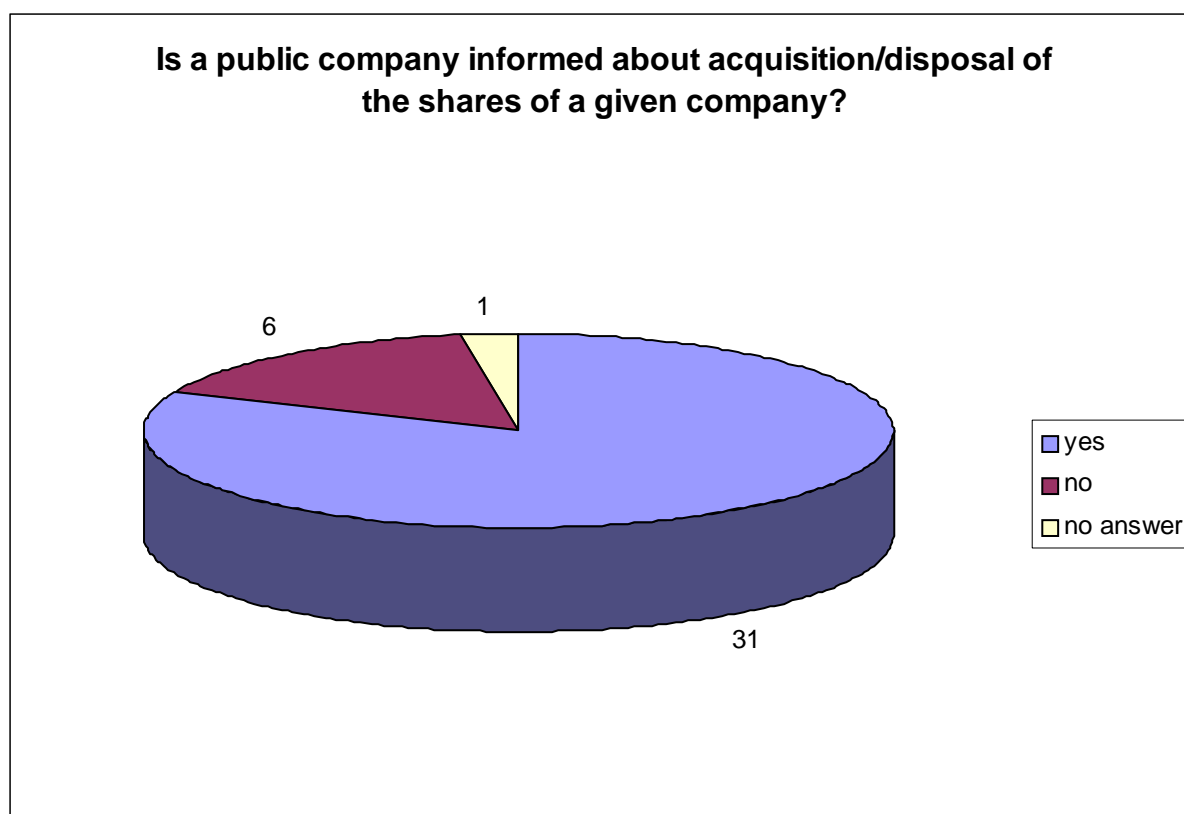
Generally capital groups and market participants acting in concert are treated as one investor and are subject to the same requirements. This is not however the case in the Barbados, Malta, Nigeria and Oman.

3. Public company disclosure obligations

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

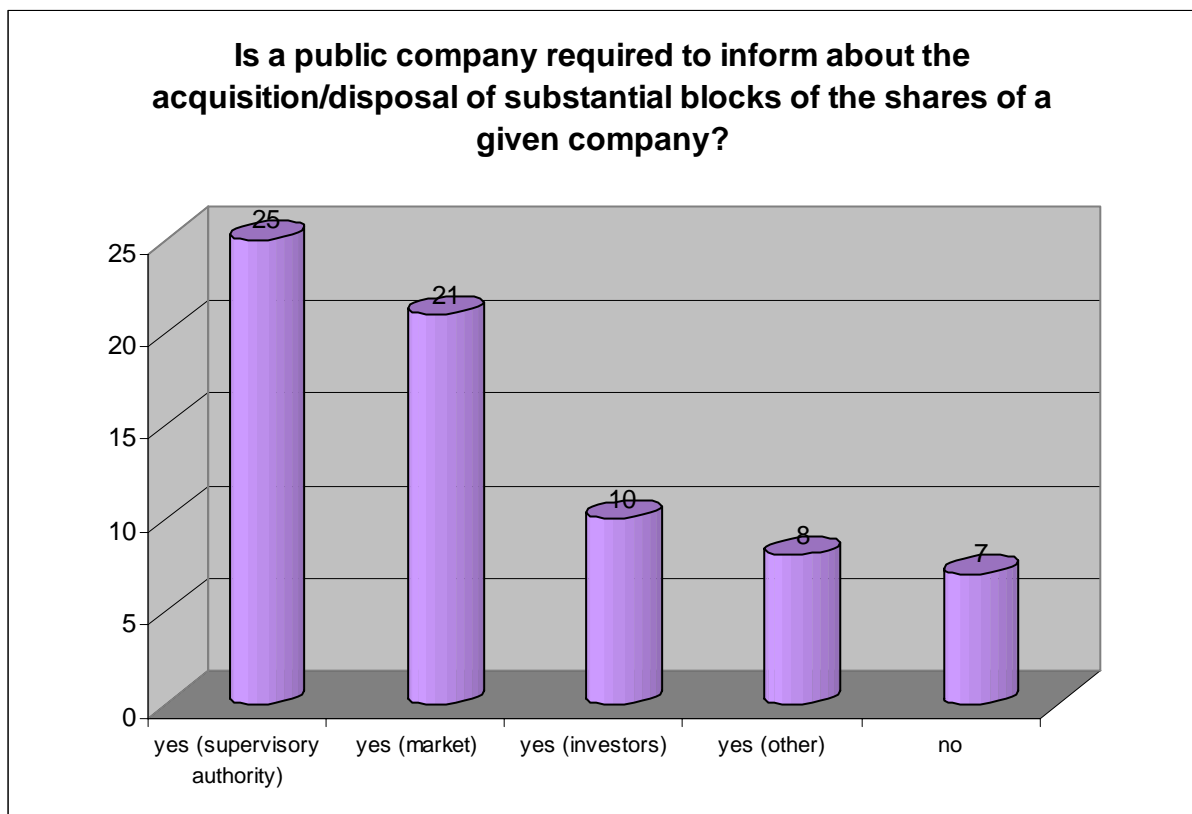
In most of the surveyed jurisdictions, public companies are informed about the acquisitions or disposals of their shares. The usual sources of this information are the investors, the media and the central securities depositories.

Turning to specific situations, in Bulgaria the central depository and the person whose voting right reaches, exceeds or falls below the disclosure thresholds are obliged to inform the company in case of direct acquisition or transfer of shares, or only investor in case of indirect acquisition . Companies are presented three times a year with an updated list of their shareholders. In Nigeria the primary information source is a daily trading publication by the stock exchange. In South Korea shareholders are not required to report their shareholdings to the companies in which they hold shares. Public issuers only receive information regarding transactions in their shares through Internet-based disclosure reports required from persons who acquire or hold 5% or more of the voting shares. In Thailand shareholding related information can be obtained from the government securities regulatory authorities. In Jordan relevant information can be acquired from the register kept by the depository of securities. Also in Montenegro the Central Depository Agency provides the entire market with information regarding acquisitions and disposal of the shares. In Venezuela the target company is informed through a report that the investors send to the SEC and that are published by the stock exchange and by newspapers.



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

In the surveyed jurisdictions the prevailing general rule is that a public company is obliged to inform the market that an investor has acquired or disposed of substantial blocks of its shares directly or through a stock exchange. A number of exceptions have however been identified. For example, in Oman the obligation to disclose such information is fulfilled only by the investor. In the Czech Republic the investor informs the competent authority and the company about an acquisition or disposal of a substantial block of shares and only the competent authority informs the market. Public companies with registered offices in the Czech Republic only have disclosure obligations when their shares are listed on another EU state stock exchange. In Venezuela there are not obligations from the company because investors are required to inform the SEC about their intentions to buy shares in advance. In Montenegro the Central Depository Agency is obliged to inform the supervisory authority about changes in acquisition or disposal of ownership rights. In South Korea the companies are not generally obliged to inform about acquisition or disposal of substantial blocks of the shares except changes regarding the principal shareholder.



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

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

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

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

The survey identified three basic regulatory models in that regard. One where there is simply no sanction imposed on the guilty company: in Barbados, Mauritius, Oman, South Africa, and Venezuela. In another model, the company encounters the same sanctions, in many cases a fine in the same range, as those applied to the guilty investor; this model refers to Argentina, Brazil, Colombia, Hungary, India, Jordan and Turkey. In a third model, a substantial fine can be imposed: in Bulgaria, Croatia, the Czech Republic, Former Yugoslav Republic of Macedonia, Malaysia, Nigeria, Poland, Chinese Taipei, and Vietnam. In South Korea when a public company fails to report only a change in the largest shareholder, the supervisory authority can impose the following sanctions: an advisory opinion for the removal of officers, a warning, a substantial fine or a surcharge. In Romania, apart from fine and warning, following complementary sanctions can be imposed: suspension or withdrawal of authorization, temporary prohibition on conduct of certain activities and services being subject to the law on capital market. It is to be noted that in China, although there are no related sanctions called for guilty companies in the securities law as such, the stock exchanges can reprimand the management of the company for a failure to disclose this type of information. In Egypt the supervisory authority can cancel the transaction in case of failure to disclose information in question. In Philippines, in addition to a fine, the trading and registration of the company shares can be suspended. In Sri Lanka the supervisory authority can transfer the securities of the company to a default board, suspend trading or delist the company for such a disclosure failure. In Thailand the regulatory authorities can suspend the trading of a company's shares until the company discloses the needed information to the public.

4. Tender offers

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

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

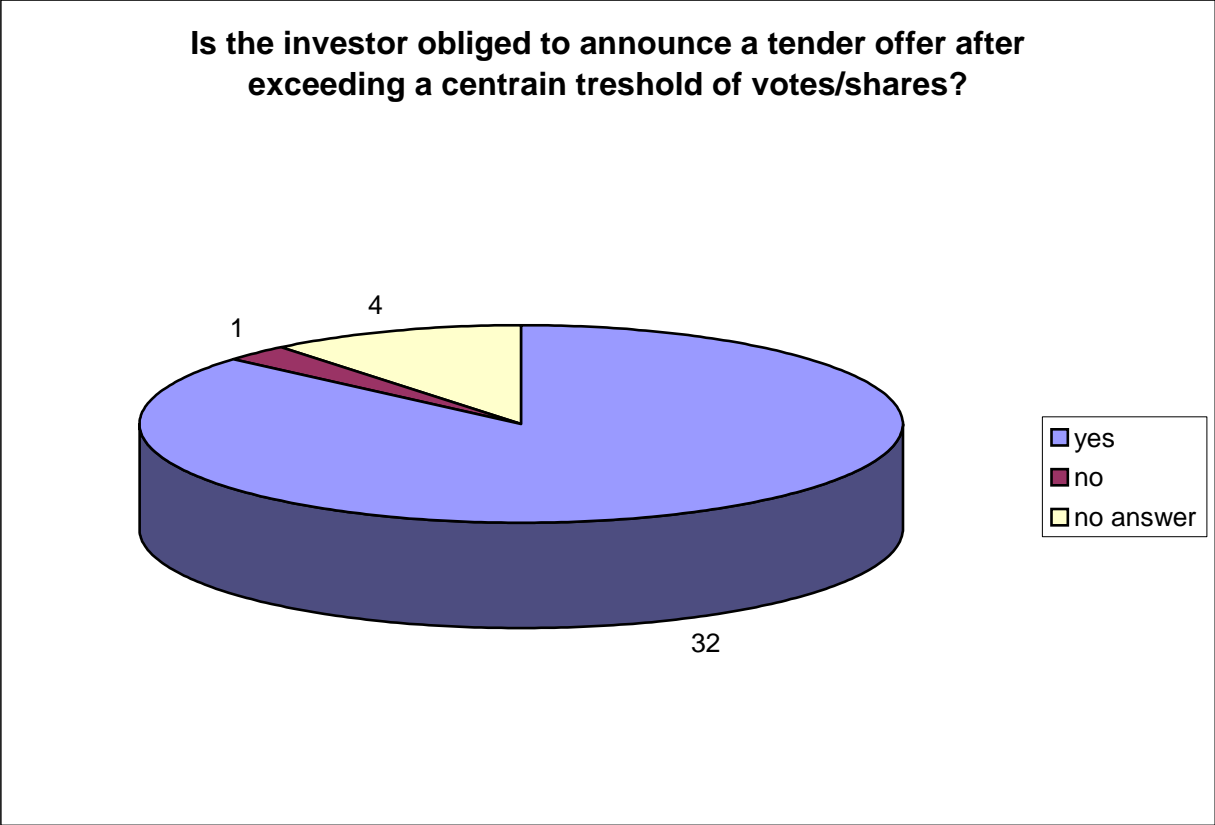
The survey has in particular enabled the identification of three major methods to define the obligation to announce a tender offer. However, on the basis of the below examples it may be observed that quite often legislation of a particular country combines more than one method.

4.1.1 The most common situation is for the announcement of the tender offer to be required when an investor crosses an explicitly defined threshold of voting rights (in Argentina - 35%; Barbados, Croatia, Colombia - 25%; China - 30%; Egypt - 1/3; Nigeria - 33 1/3 %; Hungary - 33% which is to be approved by the supervisor in advance; Philippines, South Africa - 35%; Jordan and Lithuania - 40%; Poland - 33%; Turkey - holding 25% or more of voting rights, or regardless of this percentage holding a number shares allowing for the control over the company; Venezuela - 10% in case of significant share ownership and any acquisition of percentage that allows reaching the majority control);

4.1.2 The announcement of the tender offer is required when the investor acquires a small block of shares and has already crossed a substantial threshold or gained control over the company (Bulgaria - holding 50 % or more and acquiring more than 3% within a year; Malaysia - when the acquirer already holds more than 33% but less than 50% of the company shares, he is obliged to make a mandatory offer for the remaining shares when he acquires more than 2% of the company's issued and paid-up capital during any 6-month period; Venezuela - in the case of a company's control group that intends to increase its share ownership, it has to extend the tender offer to at least the 75% of the company's capital (if the group owns less than such percentage) and if the control group owns more than 75% of the company's capital and wants to increase its share ownership, it has to extend the tender offer to the 100% of the company's shares; Colombia - holding 25% or more and acquiring more than 5%);

4.1.3 The announcement of the tender offer is required when the investor acquires a large block of shares within a short period of time (South Korea - a shareholder is required to announce a tender offer when he holds 5% of the total number of votes as a result of the purchase of shares outside the public securities market from more than 10 persons within 6 months; Poland - when the shareholder holding less than 33% of the total vote at the company acquires 10% of shares with voting rights within 60

days or when the shareholder holding 33% or more of the total vote at the company acquires 5% of shares with voting rights within 12 months; Turkey - holding from 25% to 50% of voting rights and acquiring 10% or more within 12 months; South Africa - a shareholder holding between 35% and 50% of the voting securities will be obliged to make a tender offer if he acquires 5% or more of the voting securities in any period of 12 months).



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

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

- (a) whenever the change in control is the result of a company reorganization (Argentina);
- (b) when a company seeks to repurchase 10% or less of its own shares (Barbados);
- (c) if the exceeding of the vote threshold is the result of a privatization transaction as stipulated by law, except if the transaction was concluded on a regulated market (Bulgaria);

- (d) when the price paid to a counterpart does not exceeds 10% over market price, the payment is in cash and the share is considered as liquid under current rules (Chile);
- (e) when an economic rescue scheme has been approved by the government at some specific conditions (China);
- (f) when there is a written acceptance from 100% of the voting capital holders (Colombia).
- (g) when an investor acquires threshold passing shares by inheritance, by a division of marital assets; through investments by private placement when the general assembly of shareholders grants approval by a majority of three-fourths, excluding the votes of the investor; in bankruptcy proceedings; through a change of the company's legal form (Croatia);
- (h) when a person becomes the legal successor of an investor, provided that this investor had already fulfilled his obligation to announce a tender offer (Czech Republic);
- (i) when the number of company shareholders is less than 10 within a six-month period or when the purchase is made for retirement purpose from related persons by the exercise of a shareholder's pre-emptive rights or right to demand a conversion or exchange into shares etc. (South Korea);
- (j) the government securities regulator has the right to waive the tender offer disclosure obligations if it deems that the requirement to announce a tender offer would be unfair or contradictory to the market's interest (Lithuania);
- (k) when there are no more than 20 shareholders in a private company, or another number as may be prescribed by regulation, in order to purchase shares by way of agreement (Nigeria);
- (l) when shares are purchased from the unissued capital stock, provided that the acquisition will not result in reaching a threshold of 50% or more of the total share ownership by the purchaser; when a share purchase is made in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement whereby the acquisition is made by the debtor or creditor; when a share purchase is made in connection with a privatization undertaken by the government, when the purchase is made in connection with corporate rehabilitation under court supervision, or when the purchase is made through an open market at the prevailing market price (Philippines);
- (m) when in very specific circumstances a share purchase is made directly from the State Treasury (Poland);

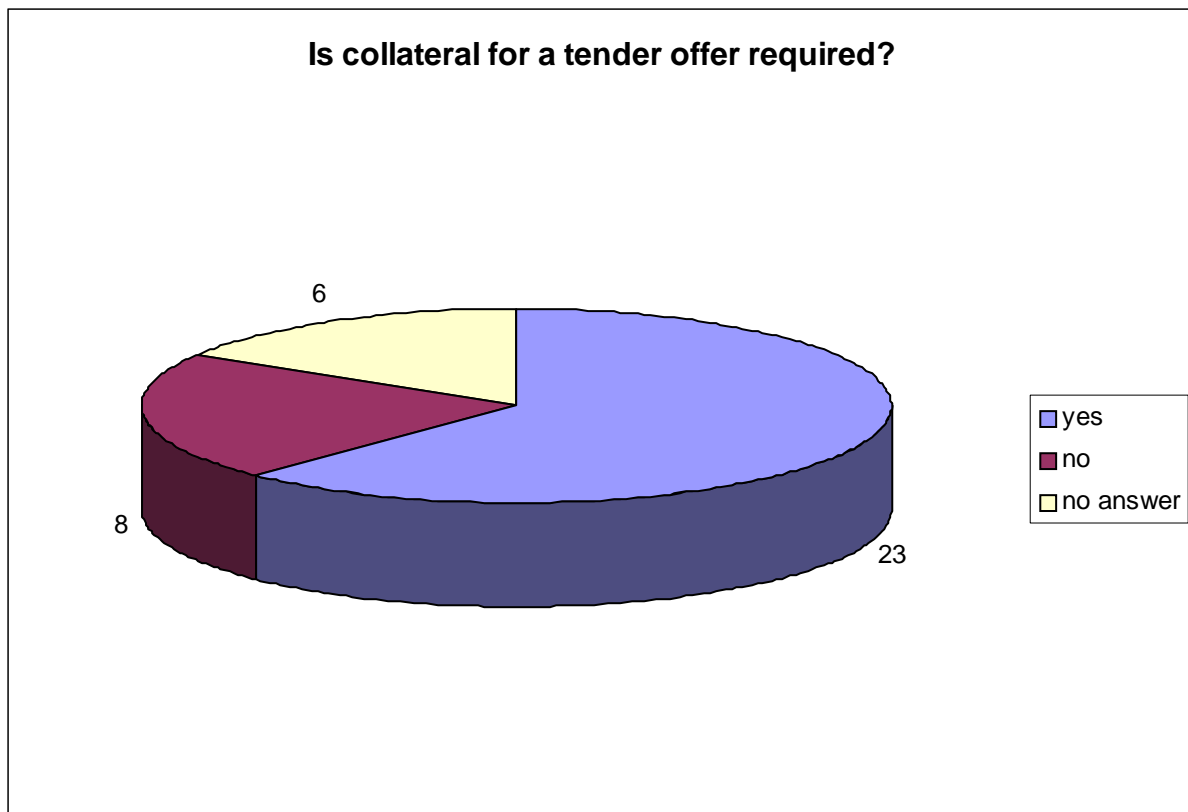
- (n) when the government securities regulator considers that a company is in a difficult financial state and that an investor is rescuing the company from possible liquidation by effecting a stock purchase (South Africa);
- (o) when a company repurchases its own shares (Thailand);
- (p) when an exemption is obtained from the government securities regulator in some specific cases, such as a financial bailout or a privatization program (Turkey);

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

Generally the investor is required to announce a tender offer only for the purchase of all remaining shares. The Survey has however enabled the identification of some exceptions to this situation, in particular in Brazil (the investor is allowed to announce a tender offer for the purchase of a part of remaining shares of the company with negative net worth or with paralyzed or interrupted activities), India (the tender offer shall be for at least 20% of the voting shares), Jordan (the investor should purchase shares from all subscribing shareholders in adequate proportion to the number of share that he intends to purchase), Malaysia (the investor who announce an offer to acquire a specified percentage of shares from all the other shareholders, with the prior approval of the supervisory authority, shall acquire shares from all subscribing shareholders up to the percentage of the voting shares to be acquired), Nigeria, South Korea (an investor is allowed to announce a tender offer for a part of remaining shares but after the announcement a reduction in the number of shares is not allowed), Pakistan and Venezuela (the investor must indicate the percentage of shares which he intends to acquire).

4.4 The requirement of collateral for a tender offer

Collateral is necessary to secure a tender offer in most jurisdictions (Poland – 100%; China – 20%; Lithuania – 10%; Romania – 30%). In Bulgaria the investor must submit proof that sufficient funds are available to him. In Egypt a letter of bank guarantee must be submitted to the authority together with the tender offer proposal. In Montenegro cash or bank warranty can be used as a collateral. In Hungary also government securities are accepted as collateral. In Brazil the investor shall hire a broker or a securities dealer or a financial institution with investment portfolio to intermediate the tender offer, who shall guarantee the financial settlement of the acquisition and the payment of the purchase price. In Barbados and Malaysia information attesting that the investor has enough resources to cover its bid is obligatory. In the Czech Republic, such information is not required on a regular basis but can be imposed by SEC on a case by case basis.



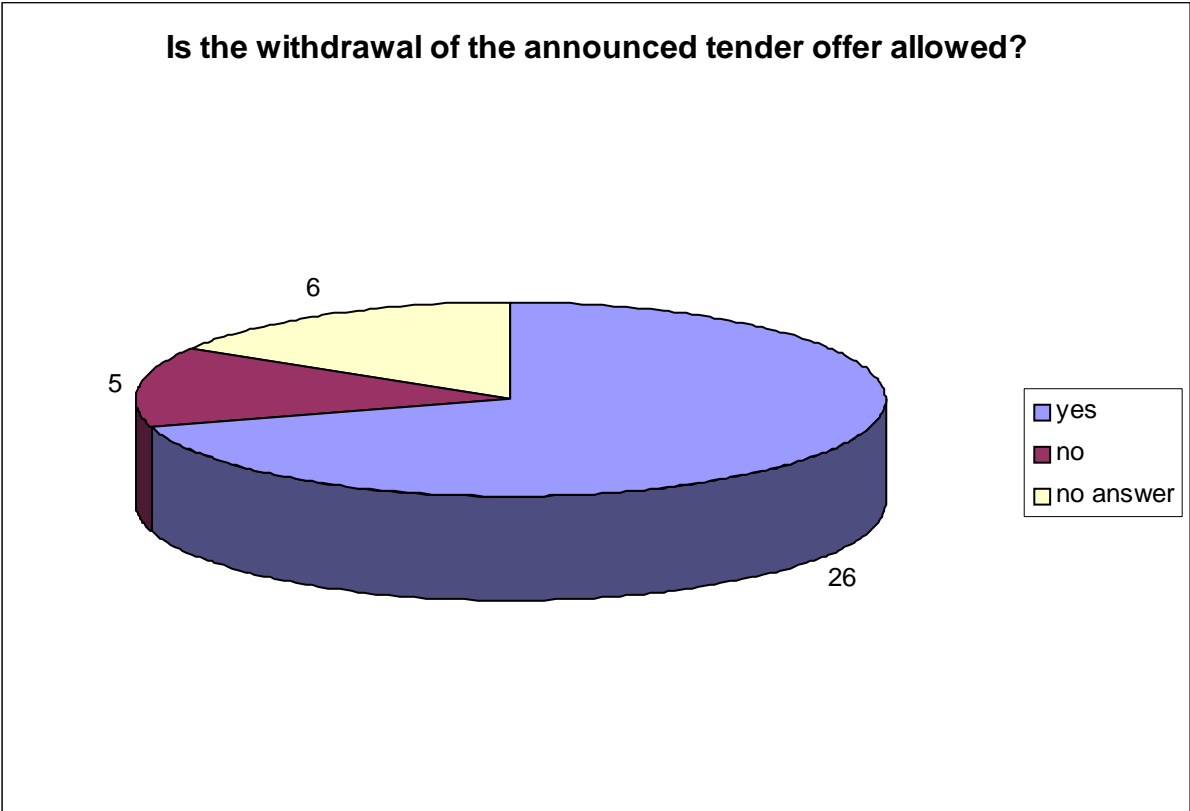
4.5 Possibility of the withdrawing an announced tender offer

In most jurisdictions the investor is allowed to withdraw the announced tender offer. However, most often the withdrawal is possible only in situations specified by law. In Barbados and Croatia a bid can be conditional on a certain number of shares being deposited and where failure to reach that number entitles the bid initiator to withdraw its tender offer. In Bulgaria, South Africa and Thailand a tender offer (only a mandatory one in case of Bulgaria) may be withdrawn only when the offer cannot be executed for reasons beyond the control of the investor, or in case of serious damage to the company's assets or a significant decrease in the company's share price in Thailand, and after the acceptance of the supervisory body. Also in Chile it is allowed only under serious and objective circumstances, which previously should be provided in the prospectus. In Czech Republic it is the case only as regards voluntary tender offers. In Vietnam the investor can apply to the supervisory authority for the cancellation of the tender offer in special circumstances, especially when the subscription volume exceeds the volume of the offer.

In Colombia, Croatia, Pakistan and South Korea the offer may not be withdrawn unless another investor announces a tender offer relating to the same shares, yet in Croatia the price of competing bid should be higher and in Poland – not lower. In Sri Lanka a tender offer shall not be withdrawn, unless the commencement of the offer was subject to the prior fulfilment of a specific condition which has not been fulfilled by the offeree.

In a significant number of jurisdictions it is stipulated that in case of changing a takeover bid the new conditions cannot be less favourable for shareholders than the previous ones, especially with regard to the price (Argentina, Chile, Colombia, Croatia, Egypt, Hungary, India, South Korea, Former Yugoslav Republic of Macedonia, Malaysia, Montenegro, Philippines, Slovenia, Thailand, Chinese Taipei, Vietnam). In Lithuania changes adverse for shareholders may be rejected by the supervisory authority and in Poland no acceptance is necessary in order to change the price for a lower one. In Czech Republic, in case of a voluntary tender offer, a change to less favourable conditions is allowed only if it is expressly stipulated in its terms and under the serious circumstances. Changes to mandatory tender offers should always be more favourable. In Montenegro, if the change takes place, shareholders who accepted the previous offer should accept the new one in order to benefit from the new conditions. In legislation of some countries there is also set forth a minimum period between the date of the amendment publication and the deadline to accept of the offer (Bulgaria, Vietnam - 10 days, Romania - 5 days, Slovenia - 7 days).

In some jurisdictions there are no particular provisions providing conditions under which the takeover bid can be changed (Bolivia, Turkey, Nigeria, Oman, Uruguay).



4.6 Requirements concerning the establishment of the price in a tender offer

In most of the countries it is a rule that the price has to be equal for all investors. The only exception is Hungary, where the entity purchasing shares may differentiate the price or exchange parity only due to the rights attached to share and no tender offer shall be phrased or arranged so as to contain or imply any discrimination relative to the declaration of acceptance in respect of shareholders.

In Czech Republic the price has to be equal for all shareholders who have identical interchangeable securities.

In Poland the entity purchasing shares may differentiate the price or exchange parity only due to the rights attached to shares.

In Slovenia if in the six months prior to the publication of the securities bid the bidder has acquired more than 10 per cent of the total issue of securities that are the subject of the securities bid, the bidder must offer at least the same conditions that were offered for the acquisition of securities in the six months prior to the publication of the securities bid. If prior to the publication of the securities bid the bidder, contrary to this law, has acquired more than 25 per cent of the total issue of the securities that are the subject of the securities bid, the bidder must offer the highest price that he paid for any acquisition of securities after he acquired 25 per cent of the securities that are the subject of the securities bid.

In Sri Lanka offers required to be made under rule 31 of the Takeovers and Mergers Code shall, in respect of any class of equity shares involved, be in cash, or where securities are being offered, the offer shall also include a cash alternative, at not less than the highest price paid by the offeror and persons acting in concert with the offeror, for shares of that class within the preceding twelve months. Where any such shares have been acquired for a consideration other than cash, the offeror shall, where the offer involves more than one class of equity shares, obtain the prior approval of the Commission before extending an offer under this rule.



Establishing the bid minimum price is less common: 25 jurisdictions have claimed that such situation exists in their law, whereas seven countries (Chile, Colombia, Czech Republic, Jordan, South Korea, Philippines and Chinese Taipei) pointed out that such practice is not obligatory for them.

In Bulgaria the price, respectively the exchange value of the mandatory tender offers and of the tender offer by a person, holding over 90 per cent of the votes at the general meeting of a public company may not be lower than the higher value out of: 1) the fair price of a share calculated on the basis of generally accepted valuation methods; 2) the average weighted market price of the shares for the preceding 3 months and 3) the highest price for a share paid by the offeror, by related to him/her persons or the persons under art. 149 para 2 of the LPOS, during the 6 months preceding the registration of the offer; in cases when the share price cannot be determined in accordance with the previous sentence, it shall be determined as the higher of the last issuing value and the last price paid by the tender offeror.

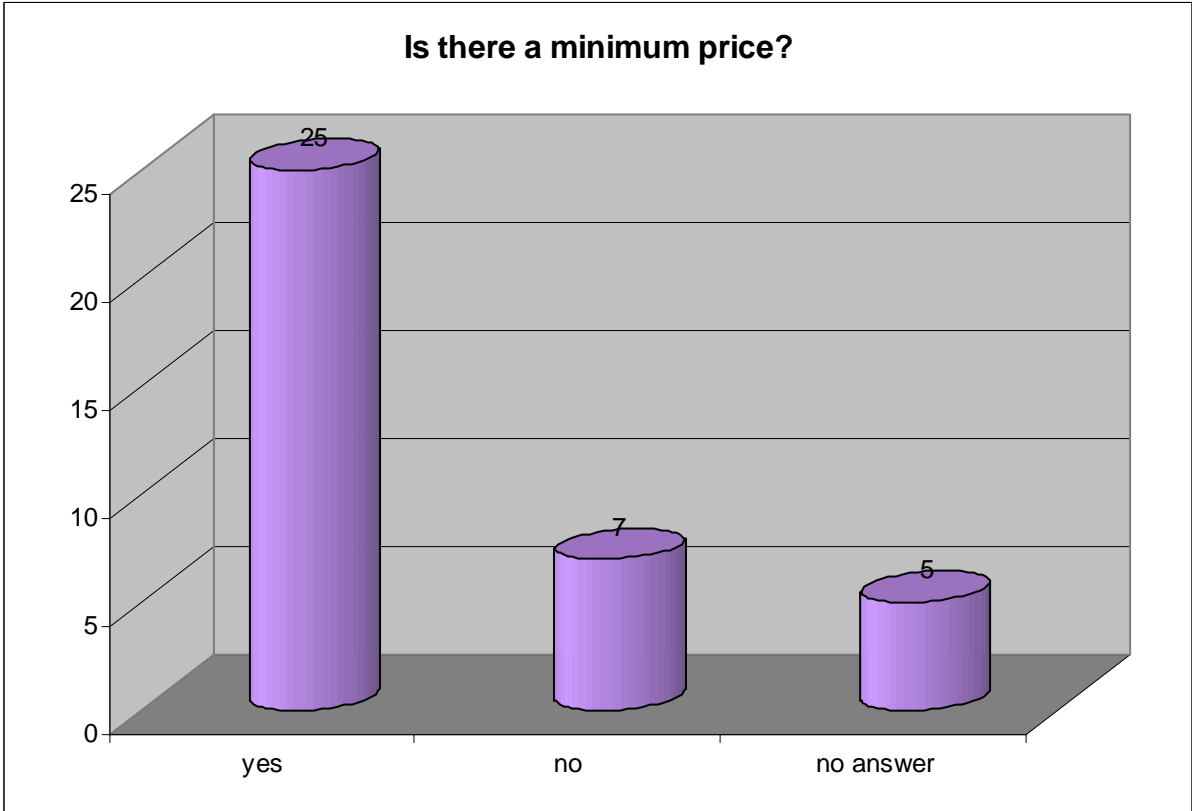
The price, the exchange value respectively, in the other cases of tender offer may not be lower than the average weighted market price of the shares for the preceding 3 months, and if there is no such price - from the highest price for a share paid by the offeror, by related to him/her persons or the persons under art. 149 para 2 of the LPOS, during the 6 months preceding the registration of the offer. The tender offeror may justify the price they offer on the basis of the fair price of the share, calculated on the basis of generally accepted valuation methods.

In Egypt tender offer price is average market price for the 6 months prior the tender offer

In Pakistan the contents of the public offer, its submission to the SEC, the date to be specified for the public announcement, mode of payment and minimum offer price, are prescribed by the SEC.

In Philippines the Rule is silent on any required minimum price but the consideration paid to any security holder pursuant to the tender offer shall be the highest consideration paid to any other security holder during such tender offer.

In South Africa the minimum price is the highest price that the investor paid in the preceding 3 months before the offer period. The SRP is entitled to extend this period beyond the 3 months if the circumstances render it necessary to give effect to the principle of equality of treatment of shareholders.



Also 25 jurisdictions have made a remark that the offered price cannot be lower than the maximum price paid by an offeror in a preceding period (e.g. over the last 12 months), whereas five countries (Barbados, South Korea, Nigeria, South Africa and Chinese Taipei) have mentioned that such a restriction does not exist in their legal system.

In Argentina the price is established by the offeror with the following exceptions: a) when the buyer has acquired securities 90 running days prior to the date the offer is

made, the price may not be lower than the highest price paid by the buyer; b) when the buyer has obtained a firm commitment to sell by the controlling shareholder or other shareholders with a right to participate in the tender offer, the price may not be lower than that set in that commitment.

In South Korea there are no pricing requirements.

In Thailand the offer price must not be less than the highest price paid for securities acquired by investor or related party of investor during period of 90 days prior to the date of tender offer document submission unless the Takeover Panel grants a waiver to the offeror to bid at a lower price.



Twenty jurisdictions have pointed out that in their legal systems there are no requirements concerning the price paid by the investor after the takeover (e.g. the price paid immediately after the takeover differs from the price offered in the takeover process), whereas eleven countries (Argentina, Barbados, Brazil, Bulgaria, India, Lithuania, Nigeria, Poland, Romania, South Africa and Thailand) have stated that such requirements exist in their law.

In Brazil According to CVM Instruction 361, article 10, item I, the instrument of APO shall contain declaration of the offeror, when he/she/it is a controlling shareholder or person entailed to him/her/it or the very company, obligating this person to pay the holders of circulating shares who accepted the APO, the biggest difference, if existing, between the price they received for selling their shares, updated in the terms

of the APO instrument and the ruling legislation, and the price adjusted by the alterations in the number of shares as a result of bonus, deployment, grouping, and conversion eventually occurring, and:

a) the price per share that would be due, or turns out to be due, if occurring, in the term of 1 (one) year to be counted from the date of accomplishment of the APO auction, a fact that would impose, or might impose, the accomplishment of mandatory APO, among those mentioned in Items I to III of art. 2; and

b) the value they would have the right to, in case they were still shareholders and dissented of the deliberation of the object company that should approve the accomplishment of any corporate event that allows the exercise of the right to recess, when this event is verified within the term of 1 (one) year, to be counted from the date the APO auction is accomplished.

In Czech Republic the only restriction related to the price paid by the investor after the takeover is that during the time when the tender offer is binding, the investor and persons acting in concert must not acquire or alienate options to the target company's participating securities, or conclude agreements on future contracts for alienation of the participating securities.

In Nigeria this issues is not provided in law.

In Poland if within six months from a tender offer for residual shares shareholder acquires further shares in the company at a price higher than the price set in the tender offer otherwise than by way of a tender offer, then the shareholder shall, within a month from the acquisition, pay the difference in the share price to all persons who sold the shares by accepting the tender offer, except for those from whom the shares were acquired at a reduced price as specified in Art. 79.4.(large block of shares).

In Romania the price offered within a mandatory takeover bid, as well as within a voluntary takeover bid, where the offeror has acquired by subscriptions within the offer, shares accounting for more than 90% of the shares targeted, is considered to be a fair price. (Article 206 of Law no. 297/2004 on capital market). The price offered within a mandatory public takeover bid, a voluntary public takeover bid or a public offer to all the shareholders and for all their holdings where the offeror purchased, by subscription within the offer, shares accounting for more than 90% of the shares targeted is considered to be a fair price where the major shareholder is exercising the right referred to in art. 206 of Law no. 297/2004 within three months from the date of closing that offer.



5. Issues to be addressed

5.1 *The problems faced in enforcement of take over regulations*

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

- (a) changes of control under indirect ownership (Chile);
- (b) a division between investors holding tradable and non-tradable shares (China);
- (c) the determination of the adequate price (Czech Republic);
- (d) shareholders represented by nominees (Hungary);
- (e) inadequacy of penalties for non-compliance (India);
- (f) takeovers by investment funds (sole beneficiary) and foreigners (South Korea);
- (g) the definition of "control" (Malaysia);
- (h) cross border problems when the initiator is a foreign investor (Nigeria);
- (i) timing issues (Philippines);

- (j) poor notification of takeover activities and lack of flexibility in takeover regulation (South Africa);
- (k) identifying capital groups (Chinese Taipei);
- (l) the amount of information that can be requested from an investor in order to keep the market fully informed (Venezuela).

5.2 Organizing an educational seminar on takeovers

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

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

Conclusion

The analysis presented in this report is based on a detailed survey of a number of EMC members. It clearly shows that there are some broad similarities in many of the surveyed existing takeover regulatory regimes. At the same time, unique regulatory solutions for specific takeover related issues have been developed in several jurisdictions.

This report therefore constitutes a useful reference for any securities regulator thinking about initiating a review of its existing takeover regulatory regime. Most of the surveyed EMC members indicated that they would view favourably the eventual organization of an educational seminar on takeovers.