

ROLE OF BOARD OF DIRECTORS FACING STRATEGIC TRANSACTIONS

In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those that are mandatory appear in **bold** below). However, soft law is developing rapidly and more recommendations are being put forward to entice boards to take a more proactive role when facing strategic transactions. It should be noted that this isn't true in the United States where there are legal duties of the Board.

Developments *in italics* refer to listed companies only, except for the USA section.

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AUSTRALIA

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When facing a strategic transaction, the Boards of the bidder and target must operate within the framework of the mandatory provisions of the *Corporations Act 2001* (Cth), the listing rules of the Australian Securities Exchange (ASX), and the guidance provided by the Takeovers Panel and the Australian Securities & Investment Commission (ASIC). Reference will be made to all these sources in this guide.

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<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Bidder</u></p> <p>The Board ordinarily has the responsibility to formulate, and/or oversee, the strategy and business plans of the company.¹ In determining whether to embark on a significant transaction, a director should ordinarily participate in all Board discussions to discharge his or her duty of diligence. A bidder will often first approach the target company, usually via its chairman, to determine whether the target Board would be receptive to a takeover. In these circumstances, the bidder may wish to ascertain whether the target board will provide a favourable recommendation to its shareholders and whether the target will cooperate in the due diligence process. However, it is open to the bidder to launch a hostile takeover without first engaging the target company, by serving a bidder's statement or intention to make a takeover bid. Any steps taken by the directors of the bidder must comply with their fiduciary and statutory duties, namely, that they must act in good faith in the best interests of the company, for a proper purpose, and with a reasonable degree of care and diligence.</p> <p><u>Target</u></p> <p>The target Board's level of involvement depends on the bidder's approach to the transaction. If the bidder plans to launch a 'friendly' takeover, the target Board may be engaged early on in the process and play an active role in negotiating the transaction. Alternatively, if the bidder launches a hostile takeover, or if the target refuses to engage with the bidder, the target is likely to have minimal involvement in the transaction's preparation and will simply have to react to the bidder's manoeuvres. Additionally, for listed companies, the strategy that the bidder adopts will largely shape how the target Board complies with its continuous disclosure obligations under ASX Listing Rule 3.1 and the <i>Corporations Act</i> (see 1.2 below).</p> <p>It is common practice for a Board to prepare a strategy to deal with</p>

¹ See ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (3rd ed, 2014), Principle 1: Lay solid foundations for management and oversight.

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	<p>unsolicited hostile bids through the adoption of a Defence Manual. The target will assemble a response team including key executives, such as the CEO, CFO, general counsel, the directors, with the chairman taking a lead role, investment bankers, legal advisors, accountants, and perhaps an investor relations firm. The target may also monitor the register of members and all trades in its shares, remain informed of any potential bidders, conduct a self-valuation, and draft public announcements in advance of any potential bids. Actions that frustrate a bid may be a breach of directors' duties and/or give rise to a declaration of 'unacceptable circumstances' by the Takeovers Panel.²</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>The Board of a listed company is usually responsible for overseeing the company's process for making disclosures of price-sensitive information.³ Under ASX Listing Rule 3.1, once a listed company is aware of information "that a reasonable person would expect to have a material effect on the price or value" of its securities, the company must disclose that information immediately – subject to limited carve-outs. Such information would include a takeover offer. However, under ASX Listing Rule 3.1A, there is a carve out if the offer is an "incomplete proposal or negotiation", is confidential, and "a reasonable person would not expect the information to be disclosed", disclosure would not be required.</p> <p>Consequently, if the bidder serves a bidder's statement detailing its intentions, as in a hostile transaction, disclosure would be required unless the carve out is satisfied. Additionally, if the information is leaked to the public, the target would be required to disclose the takeover proposal. The premature announcement of a takeover bid that ultimately falls through can have dramatic adverse effects on the price of the target's securities. As such, both the target and bidder Boards should put in place measures to ensure the confidentiality of the transaction. Such measures may include limiting those who are involved in the preliminary stages of the negotiation and requiring confidentiality undertakings as conditions for the disclosure of any private information (such as in the due diligence process – see 2.1 below)</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>This may involve the implementation of certain protocols dealing with conflicts of interests, such as those that limit the involvement of "participating insiders" (such as members of the management team - see 4.2 below), the establishment of rules to limit which Board members should be involved in negotiations (see 2.1 below), and the setting up of special committees, such as a Board sub-</p>

² Takeovers Panel, *Guidance Note 12: Frustrating Action*.

³ See ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (3rd ed, 2014), Principle 1: Lay solid foundations for management and oversight.

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	committee that has the purpose of preparing statements to shareholders (see 1.4 below).
<p>1.4 Need for Special committee(s)?</p>	<p><u>Bidder and Target</u></p> <p>It may be appropriate for a Board to appoint a committee in a number of circumstances, including, but not limited to, where there is a potential conflict of interest (see 4.2 below), to draft the Target's Statement or to consider announcements that are to be released to the ASX and the public (see 2.3 below), or to provide financial reporting assistance to the Board (see 3.3 below).</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>To preserve confidentiality, the number of individuals involved as well as their levels of involvement should be limited as much as possible. The team should generally be restricted to key executives, such as the board, or committee of the board, CEO, CFO, and general counsel. Depending on the nature of the transaction, it may also include an accounting firm, a legal advisor, an investment banker, a stockbroker, and possibly a PR firm.</p> <p><u>Target</u></p> <p>As in 1.1 above, if the bidder launches a hostile takeover by serving a bidder's statement, the target must act quickly to convene a team of directors and any relevant advisors to determine how to respond and to consider the implementation of any defence strategies. The target must notify the ASX and will often provide a statement recommending that shareholders take no action pending advice from the Board.</p> <p>Alternatively, the target Board may be approached in the early stages of the transaction process to determine if it would be willing to cooperate in confidential negotiations and if its directors would be open to providing a favourable recommendation to its shareholders. While the bidder will actively research the target using publicly available information to determine the viability of the transaction, it may additionally request access to the target's private information to further inform its proposal. In these circumstances, the target Board must determine whether to grant due diligence access to the bidder. When considering this, and when considering whether to engage with the bidder more generally, the Board must have regard to their duties as directors. The Board must consider such matters as the nature of the proposal, including its value and terms, the extent of the due diligence requests, any exclusivity requests, and the company's financial situation.</p>

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<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>There is a general law duty owed by directors not to misuse confidential information, as this would be an improper use of power (and possibly a breach of other directors duties).⁴ The <i>Corporations Act</i> also prohibits a director from improperly using information gained in his or her capacity as director to obtain an advantage for him or herself or another, or to cause detriment to the company.⁵ There may also be contractual and equitable obligations of confidence imposed on the directors.⁶</p> <p>In the context of a takeover, it is common throughout the negotiation process to request confidentiality undertakings from the individuals involved. For example, when granting a due diligence request, the target Board may provide private information on the condition that the bidder maintains its confidentiality (see 2.1 above).</p> <p>There is also a prohibition on insider trading or on passing on price sensitive information in circumstances where the discloser knows, or ought reasonably to know, that the recipient of the information will, or is likely to trade on the basis of the information, or to pass the information on.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>A company need not disclose price sensitive information (such as receipt of a bid) so long as the information is confidential, concerns an incomplete proposal and a reasonable person would not expect it to be disclosed. If confidentiality is lost, the board must immediately disclose the information.</p> <p>The bidder and the target should have a system in place to prepare, and regularly update, announcements pertaining to a leakage or rumour as early as possible. The ASX has provided guidance for listed companies that, given the immediacy requirement for announcements under ASX Listing Rule 3.1, an entity may give delegations to senior management to release announcements of their own accord or to have a disclosure committee that can meet on short notice to consider an announcement.⁷ For significant disclosure announcements, it is appropriate for the announcements to be considered and approved by the Board before they are released,⁸ but this is not always necessary.⁹ Consequently, if a leak does in fact occur, it will be able to be dealt with it efficiently and effectively, and according to any disclosure obligations that may be</p>

⁴ See *Holyoake Industries (Vic) Pty Ltd v V-Flow Pty Ltd* [2011] FCA 1154.

⁵ *Corporations Act 2001* (Cth) s 183.

⁶ See *Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 50-1.

⁷ ASX Listing Rules, *Guidance Note* 8, 20.

⁸ *ASIC v Macdonald (No 11)* [2009] NSWSC 287, [333].

⁹ *Morley v ASIC* [2010] NSWCA 331, [808].

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	triggered by the loss of confidentiality.
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p>The insider dealing provisions in the <i>Corporations Act</i> apply in respect of 'inside information'; that is, information not generally available, but, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the company's shares.¹⁰ Board members are likely to have such information when participating in the confidential negotiation of a transaction. A Board member that has inside information, and indeed any other individual, must not purchase the securities, procure another individual to purchase the securities, or communicate the information to another individual if that individual is likely to purchase the securities or procure another to purchase the securities.¹¹</p> <p>A Board can put into place 'Chinese wall arrangements' to protect itself from accusations of insider trading. In particular, under section 1043F of the <i>Corporations Act</i>, it will not be insider trading if the decision to enter a transaction was taken on behalf of someone other than an officer with inside information, it had in operation arrangements that could reasonably be expected to ensure that the information was not communicated to the person and that no advice regarding the transaction was given by the officer with the information, and the information was not in fact communicated and no such advice was in fact given.</p> <p>Listed companies almost invariably have in place insider trading protocols which give effect to the insider trading prohibitions and require employees to comply.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder</u></p> <p>The Board should remain informed of the particulars of the offer and review it. Generally, variation of an offer is prohibited, unless the variation relates to improvement of the consideration, releasing a condition or extension of the offer period.¹²</p> <p><u>Target</u></p> <p>In order to satisfy the duties owed by directors, the Board must assess the reasonableness of the bidder's proposal based on all the material information reasonably available, having regard to the value and fairness of the offer, the bidder's financial situation, the conditions attached to the bid, risks associated with the transaction,</p>

¹⁰ *Corporations Act 2001* (Cth) s 1042A (definition of 'inside information').

¹¹ Ibid s 1043A; See also s 1042F.

¹² Ibid ss 649A-650D, 655A.

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	<p>and the bidder's plans and intentions for the target, including how it will affect the target's stakeholders. It may be necessary, although it is not a requirement, to appoint independent experts or advisors to support the Board's assessment. Such steps will go towards the directors satisfying their duties.</p> <p>Additionally, it is within the scope of the powers of the directors to seek a better price or another bidder by testing the market if the current offer is considered to be inadequate.¹³ However, there is no duty imposed on the board to run an auction process for the company, in contrast to the "Revlon duties" in the USA¹⁴.</p>
3.2 Appointment of an ad hoc committee	See 1.4 above.
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>It is commonplace for large companies to have an audit committee of the Board, composed of a small group of non-executive directors who are ideally independent of management.¹⁵ Companies in the S & P All Ordinaries Index are required to have an audit committee.¹⁶ Nevertheless, the ASX Corporate Governance Council has recommended that this requirement be applied to <i>all</i> listed companies.¹⁷ Furthermore, if the company is in the top 300 of the Index, the committee must consist of at least 3 non-executive directors, the majority of whom are independent directors, and must be chaired by an independent director who is not the chair of the Board.¹⁸ The primary purpose of the committee is to assist the Board in completing its financial reporting responsibilities. Its functions may include nominating external auditors, reviewing audit results, and reviewing financial statements with auditors before putting them before the Board for approval.</p> <p>It would be unusual for the audit committee to have a role which was separate to the board's role in the context of a takeover.</p>
3.4 Employee representatives (if any on the board) <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	The law does not provide for separate employee representatives to be on the board and this is very rare.

¹³ See, eg, *Darvall v North Sydney Brick & Tile Co Ltd* (1989) 15 ACLR 230, 286.

¹⁴ Compare the U.S. situation in *Revlon Inc v MacAndrews & Forbes Holdings Inc* 506 A 2d 173 (1985, Del Supr).

¹⁵ Ford, Austin & Ramsay's Principles of Corporations Law, *Chapter 11: Accounts, Audit and Disclosure*, [11.670].

¹⁶ ASX Listing Rule 12.7.

¹⁷ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (3rd ed, 2014), Recommendation 4.1.

¹⁸ ASX Listing Rule 12.7; *ibid*.

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<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p><u>Bidder and Target</u></p> <p>Generally, the board is not required to appoint an independent expert. However, the appointment of independent experts will provide support for decisions of the Board and assist in eliciting and interpreting all reasonably-available material information. For example, the target directors may express that their recommendation to accept or reject the bid to the target shareholders is conditional on the independent expert's conclusion that the offer is fair and reasonable. The <i>Corporations Act</i> envisages the inclusion of an expert's report in the target's and bidder's statements, providing that it can only be done with the consent of the expert.¹⁹ It must not be done in a manner that is misleading or without substantiation.²⁰ The inclusion of an expert's opinion may ultimately limit the risk faced by directors for breaches of their duties.</p> <p>However, in some circumstances, an expert's opinion as to the fairness and reasonableness of the transaction must be included in the target's statement. This applies where the bidder's voting power in the target is at least 30%, the bidder is an individual who is a director of the target, or where the bidder is a corporation with a director in common with the target.²¹ The Takeovers Panel has also recognised that an independent expert's report may be required if the target Board was "too beholden to a bidder to be relied upon to provide an independent and critical assessment in their target's statement".²² 'Fairness' in this sense means that the offer price is equal to or greater than the value of the securities in the offer while 'reasonableness' will be determined having regard to a number of circumstances, including the likely market price if the offer is unsuccessful and any special value of the target to the bidder (for example, particular technology held by the target).²³</p> <p>The courts and the Panel place much emphasis on the independence of the expert. The <i>Corporations Act</i> provides that the expert cannot be an associate of the bidder or target, and that the report must disclose details of the relationship between the expert and the bidder or target.²⁴ It may be misleading if the report does not disclose that previous versions of it had been discussed and revised with the target.²⁵ Although the target may comment on drafts of the report, those comments must be limited to issues of factual accuracy only.</p>

¹⁹ *Corporations Act 2001* (Cth) ss 638(5), 636(3).

²⁰ *Programmed Maintenance Services Ltd 02* [2008] ATP 9, [28].

²¹ *Corporations Act 2001* (Cth) s 640(1).

²² *Sirtex Medical Ltd* [2003] ATP 22, [66].

²³ ASIC Regulatory Guide 111: *Content of expert reports*, RG 111.10-111.17.

²⁴ *Corporations Act 2001* (Cth) s 648A.

²⁵ See ASIC Regulatory Guide 112: *Independence of experts*.

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<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder</u></p> <p>The bidder may issue a statement to the shareholders of the target outlining the terms of the offer and any relevant disclosures. This includes information regarding the identity of the bidder, the bidder's intentions regarding the target's business and employees, and details of the consideration to be provided.²⁶ This statement is usually prepared by the bidder's legal counsel and financial advisors. Directors and executives may also contribute to a limited extent. For example, the statement is often preceded by a letter from the bidder's chairman to 'sell' the offer to the target's shareholders. The bidder's statement must be approved by a resolution of the Board.²⁷</p> <p><u>Target</u></p> <p>After the Board has assessed the proposal (see 3.1 above), the Board, or a sub-committee of the Board (see 4.2 below) will ordinarily provide a statement to its shareholders recommending that they either accept or reject the bid.²⁸ The <i>Corporations Act</i> also stipulates that the target's statement be approved by the Board.²⁹ In fact, in a non-hostile transaction, the bidder will often require the target Board to provide a favourable recommendation to its shareholders as a condition of the transaction. Pursuant to s 638(3) of the <i>Corporations Act</i>, the directors must provide their own reasons for the recommendation. The Takeovers Panel has said that the recommendation "must be soundly-based and reasonable" (Guidance Note 22). If the reasons are unclear, it may "give rise to unacceptable circumstances" and empower the Takeovers Panel to make orders. The <i>Corporations Act</i> also provides that the statement must include all information that the shareholders would reasonably require to make an informed assessment in accepting or rejecting the bid.³⁰ The content naturally depends on the nature of the bid, but will often include information about share values, company financial information, and the implications of the transaction for the shareholder.³¹ The standard of care that directors must apply when preparing documents for the shareholders is arguably as high as the standard applying to the preparation of a prospectus.</p> <p>More generally, to satisfy their duties as directors when making a recommendation, and indeed any statement in the context of a takeover bid, a director should obtain relevant information to the</p>

²⁶ See ASIC Regulatory Guide 9: *Takeover bids*, RG 9.246-9.353.

²⁷ *Corporations Act 2001* (Cth) s 637.

²⁸ See ASIC Regulatory Guide 9: *Takeover bids*, RG 9.354-9.376.

²⁹ *Corporations Act 2001* (Cth) s 639.

³⁰ *Ibid* s 638(1).

³¹ *Unity APA Ltd v Humes Ltd* (1986) 13 ACLR 501.

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	<p>extent they reasonably believe to be appropriate, act in good faith and for a proper purpose, avoid any conflicts of interest, and believe on reasonable grounds that their action will benefit the company as a whole.³² Thus, a letter to shareholders that sensationalises the bid and is not objective or balanced in its presentation of information will be unacceptable.³³ If the target Board does not consider the proposal to be in the company's best interests, appropriate strategies may include clearly and comprehensively explaining to the shareholders the reasons for such an opinion or, depending on the circumstances, seeking alternative bidders (see 3.1 above).</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>Directors owe fiduciary duties to avoid conflicts of interest between their duties to others or their personal interests and their duties to the company and to maintain the confidentiality of the company's information, as well as statutory duties not to improperly use information or use their position to gain an advantage for themselves or others or to cause detriment to the company.³⁴ However, there are no rules in Australia which clearly direct how a director should deal with conflicts of interest when facing a strategic transaction. The process that is to be followed largely depends on the context. For example, in the situation that an individual is a director of both the target and bidder, the director will often excuse him or herself, or be excused by the chairman, from potentially both target and bidder Board meetings in which the takeover will be considered. Additionally, in the situation of a target that has received a bid, the target may establish a special committee of the Board, which excludes the director with a conflict, to manage the target's response to a bid. A more difficult scenario is where a substantial shareholder has a nominee director on the Board. A recommended method of dealing with this is to have protocols, to which the appointing shareholder and nominee director have consented, which authorise the exclusion of the nominee director from Board deliberations in the event of a conflict.</p> <p>Nevertheless, the Takeovers Panel has provided some guidance. According to the Panel, a "participating insider" includes target directors who are "given an understanding by, or enter or propose to enter into an agreement with, a potential bidder that they will gain or benefit from...a successful bid".³⁵ The Panel seeks to ensure that consideration by the target Board and management of a bid is free from any actual, or appearance of, influence from such participating insiders. As such, these directors "should not be</p>

³² See *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483.

³³ See, eg, *Programmed Maintenance Services Ltd* 02 [2008] ATP 9, [17]-[19].

³⁴ *Corporations Act 2001* (Cth) ss 182-3.

³⁵ Takeovers Panel, Guidance Note 19: *Insider Participation in Control Transactions*, [2].

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	<p>present at, or participate in or vote on, any consideration by the Board of the bid".³⁶ To accomplish this, a Board should implement appropriate protocols to guide how an individual in such a position should proceed and to ensure that any takeover proposal is not influenced by that individual.</p> <p>The Panel recommends the appointment of an 'independent board committee', constituted by directors who are not participating insiders, to oversee the protocols. While the Panel does not prescribe what protocols should be adopted, as a protocol's appropriateness depends on the particular circumstances of the company, it provides several examples, including that the target Board is to control the degree of involvement of participating insiders, participating insiders are to cease communications with the bidder except in accordance with the protocols, participating insiders are not to provide corporate information to anyone without the committee's approval and following entry into a confidentiality agreement, and that participating insiders are to disclose to the target Board any non-public information about the target provided by that insider to the bidder.³⁷</p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	<p>As above, the Board should review any conflicts of interest and establish appropriate protocols. Notably, the statutory duties apply to the officers and employees of the company, in addition to directors, and the Takeovers Panel's guidance extends to officers and advisers. Contracts of employment frequently include obligations to avoid conflicts of interest.</p>
4.3 Publicity	<p><u>Bidder and Target</u></p> <p>It may be appropriate to engage a PR firm to advise how the bidder or target should present the offer to the shareholders and media so that it is reflected positively (or negatively).</p>
4.4 Merits	See 3.1 above.
<p>5. Shareholders'activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p>Common objectives of activists include influencing Board representation and influencing a transaction involving the company, such as its sale to a third party. Boards should take care to develop strategies to prevent or prepare for shareholder activism. Some actions that a Board may take to prepare for shareholder activism and to minimise the disruption caused by activism to the company's operations include monitoring share registers, reviewing governance policies and financial performance, informing itself of market developments, developing a response manual, and, most importantly, maintaining effective communication with shareholders.</p>

³⁶ Ibid [16].

³⁷ Ibid [19].

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	<p>Consistently engaging with shareholders, particularly on matters relating to financial performance and company strategy, may reduce the risk and effect of shareholder activism. Indeed, maintaining shareholder communication arguably falls within the scope of the Board's general responsibilities. In this respect, it may be appropriate to establish an investor relations team. Boards may also develop strategies to respond efficiently and effectively to unforeseen threats of shareholder litigation. Importantly, the Board must keep in mind its duties to the company when responding to shareholder activism, particularly because the Board, unlike the activists, must act in the company's best interests.</p>
6. Communication	
6.1 Communication Plan	See 2.3 above.
7. Duties post transaction	
7.1 Vis-à-vis employees	N/A
7.2 Vis-à-vis company	<p><u>Bidder and Target</u></p> <p>It is recommended that both Boards develop integration plans, or review integration plans developed by management, prior to the transaction's completion. This will ensure that the post-closing process runs smoothly, all rules are complied with, and all expectations and obligations are fulfilled.</p> <p>More specifically, if the bidder is a listed company, the bidder must advise the ASX of the outcome of the bid once the takeover offer period ends, if the outcome is of such a nature that "a reasonable person would expect to have a material effect on the price or value of the entity's securities".³⁸ The bidder must also address administrative issues, such as ensuring that the shareholders who have accepted the bid have been properly paid and that tax considerations are accounted for. If the target is a listed company, it must advise the ASX of the outcome of the bid once the takeover offer period ends pursuant to ASX Listing Rule 3.1. The target may also have to give the ASX a distribution schedule of each class of equity security showing the number of holders and details of the 20 largest holders in each class of equity security.³⁹</p> <p>It is common for a bidder to have its nominees appointed to the target Board. The bidder and target directors usually negotiate prior to the conclusion of the offer how the Board will be modified to take into account the bidder's new shareholding in the target. If such an agreement cannot be reached, the <i>Corporations Act</i> also</p>

³⁸ ASX Listing Rule 3.1.

³⁹ ASX Listing Rule 3.4.

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	provides a procedure for the removal of directors for public companies, which operates irrespective of what is provided in the company's constitution. ⁴⁰

⁴⁰ *Corporations Act 2001* (Cth) s 203D.

AUSTRIA

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Schönherr

As a preliminary remark it should be noted that Austrian corporate law provides for a two-tiered board structure consisting of the Management Board and the Supervisory Board for joint stock companies and limited liability companies.⁴¹ Whereas members of the Management Board legally represent the company and independently run the company's day-to-day business, **members of the Supervisory Board are in charge of monitoring and controlling the management of the company's business.** They must in particular review any of the management's decisions, which may have a material impact on the corporation's profitability and liquidity.

This article examines the role of Supervisory Board directors facing strategic transactions.

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<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In case the Target is approached by a Bidder the Management Board has a duty to inform the Supervisory Board as soon as the circumstances indicate that the transaction will materialize. The role of the Supervisory Board is to accompany the Management Board in making a decision on how to react in the best interest of the company.</p> <p><i>Under the Austrian Takeover Act, which is applicable if the Target is a joint stock company based in Austria and its shares are admitted to trading at the Vienna Stock Exchange at a regulated market, the Supervisory Board (as well as the Management Board) may not take any measures which could prevent the shareholders from making a free and informed decision on the bid or could frustrate the bid's success, unless the general meeting has approved a specific defence measure after the public announcement of the Bidder's intention. Preventive actions without a specific imminent bid are admissible.</i></p> <p><i>There is no obligation to neutrality and the Target may in particular solicit a better offer from a 'white knight' without prior shareholder approval. The best short-term defence measure available to the Supervisory Board probably is a negative target response statement (see 2.1. below).</i></p> <p><u>Bidder</u></p> <p>The obligation of the Supervisory Board is to monitor the company's management and implies a duty to render forward-looking advice on (future) strategic transactions. The</p>

⁴¹By contrast, the *Societas Europaea* can opt for either a one-tier or a two-tier system; the rules laid out herein for the members of the Supervisory Board apply to members of the Administrative Board in such SEs which opted for a monist structure.

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	<p>determination of the company's business strategy must be agreed upon between the Supervisory Board and the Management Board.</p> <p>In the face of an acquisition opportunity, the Management Board should thus involve the Supervisory Board already at the early planning stage and regularly report on the status of the planned transaction. The Supervisory Board is obligated to monitor every step on the way and should thus also be involved in every step of the transaction – starting from the strategic considerations and planning until the final approval of the specific transaction.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Members of the Supervisory Board are statutorily obliged to maintain secrecy <i>vis à vis</i> third parties.</p> <p>Members of the Supervisory Board must immediately disclose any conflict of interest to the chairperson of the Supervisory Board (if the chairperson is conflicted, to the deputy). A conflicted member is prohibited from voting on any decisions which may be affected by the conflict. He/She may even be banned from participating in the respective Supervisory Board meeting.</p> <p>As a consequence, ad-hoc committees, composed of non-conflicted members of the Supervisory Board are often established and assume the function of the Supervisory Board.</p> <p><i>Supervisory Boards of listed companies are bound by insider dealing rules (see 2.4 below).</i></p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>The Management Board is generally obligated to report any possible M&A transaction or new development of a current matter to the Supervisory Board and to provide its members with the written documentation needed to pass a free and informed decision in the best interest of the company in the end. Ensuring that the Supervisory Board is supplied with sufficient information, however, is a joint task of the Management Board and the Supervisory Board.⁴²</p> <p>Both boards should draft and implement rules of internal procedure to facilitate disclosure and reporting obligations of the Management Board and to organize communication between the boards. The Supervisory Board should furthermore put in place rules for the establishment of sub-committees and/or ad-hoc committees and their respective scope of competence. In addition, all discussions of the Supervisory Board, and/or the respective committee, should be recorded in writing for future reference.</p>

⁴² The general principles are also reflected in the Austrian Code of Corporate Governance, which provides listed companies with a set of voluntary rules for the management and control of enterprises. It was established in 2002 and has since been frequently adapted to new national and international developments. The Code must be adopted by all companies listed on the Austrian prime market.

Topic / Board's role	Austria
	<p>Delegating tasks of the Supervisory Board to a special committee in cases of strategic transactions is often sensible for confidentiality reasons and allows a closer collaboration with the Management Board as well as a more flexible way of involving the Supervisory Board in the various steps of the transaction.</p>
<p>1.4 Need for Special committee(s)?</p>	<p>As already mentioned above it can be more efficient to set up a subcommittee tasked to fulfil the monitoring, supporting, and even decision making duties of the Supervisory Board. A committee may also be appointed to combine the expert knowledge of some members, or for confidentiality reasons. Finally, in complex cases with conflicting interests, establishing an ad-hoc committee will be inevitable.</p> <p>A subcommittee has at least two members, who are elected from among the Supervisory Board members taking into account the statutory one-third parity rule, which entitles employees' representatives on the Supervisory Board to appoint one member for every two members appointed by members of the Supervisory Board who have been elected by the general meeting.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>General</u></p> <p>The Supervisory Board must make sure that it has all information necessary to thoroughly gather and assess the relevant arguments its decisions are based on. It should further see that the negotiating process is structured in the most beneficial way for the company, considering possible competitive bids, the participation of external M&A experts, tax optimizations, etc.</p> <p><u>Bidder</u></p> <p>Especially for complex and high-volume transactions, the Supervisory Board should take care that the Target's value is assessed by an independent expert already at an early stage and that a detailed due diligence (covering commercial/operational, financial, legal and tax aspects) is mandated and conducted in due time.</p> <p><u>Target</u></p> <p>The Supervisory Board should ensure that the company is presented in a fair manner and that the Management Board keeps risks of exposure at a minimum by</p> <ul style="list-style-type: none"> • putting in place a confidentiality agreement with the bidder

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	<p>before commencing the DD;</p> <ul style="list-style-type: none"> • impose strict controls on data room access and use; • make sure that sensitive data ('red files', data privacy rights, competition law issues, agreements subject to increased confidentiality, etc) is disclosed at the latest stage possible; and • giving consideration to a vendor DD. <p><i>Under the Austrian Takeover Act Boards of listed companies must respond to a bid with a target response statement. The Supervisory Board must take a stand; it may not refrain from commenting the bid. This statement should cover (i) the commercial adequacy (it might be prudent for the Supervisory Board to obtain a separate fairness opinion in this respect), (ii) the impact of the bid on the Target's employees and creditors as well as the public, and finally (iii) a recommendation to the shareholders. The takeover response statement is often also the most effective defence measure in the toolbox of the Supervisory Board.</i></p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Yes, <i>it is a statutory obligation for listed companies.</i></p> <p><u>Target</u></p> <p>The decision whether a DD should be admitted and the respective scope of the DD fall under the responsibility of the Management Board without an obligation to involve the Supervisory Board. In case the Supervisory Board got involved, it must ensure that the respective data disclosure is in the best interest of the company and that appropriate safeguards are in place to protect sensitive data.</p> <p><i>Members of the Supervisory Board are 'primary insiders' by law. Under the Issuer-Compliance-Regulation adopted by the Austrian Financial Market Authority and the Austrian Takeover Act the Supervisory Board must ensure that a project-related confidentiality area is established and adequately organized, and that records of the people with access to the confidentiality area are kept; it should point out the necessity of establishing a project-related area to the Management Board.</i></p> <p><i>In addition, the Supervisory Board should ensure that contractual provisions on the insider trading ban, the prohibition from disclosing privileged information and giving recommendations are included in confidentiality agreements with all people involved in the project.</i></p>

Topic / Board's role	Austria
	<p><i>Finally, both Boards of the Target are generally obligated to comply with the ad hoc disclosure rules under the Austrian Stock Exchange Act. Under these provisions any information on new facts and occurrences which could materially influence the quoted price must be promptly disclosed, including information on bids. An exemption is granted only in cases where the Bidder complies with the confidentiality rules set out in the Austrian Takeover Act.</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p><i>Any leaks of the Bidder's intentions which can be seen in share price movements or rumours and speculations on the market will force the Bidder to publicly announce its intention to launch a bid. Should the Bidder already be in negotiations with the Target at this point, also the Boards of the Target are obliged to publish the Bidder's intention.</i></p> <p><i>The Supervisory Boards of Bidder and Target should thus make sure that a leakage strategy is in place already before negotiations commence. The latter should also be observed for a non-listed company.</i></p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><u>Bidder and Target</u></p> <p><i>Members of the Supervisory Board are 'primary insiders' by law and should ensure that all necessary safeguards to prevent insider dealing are in place.</i></p> <p><i>The Supervisory Board should make sure that the actions of the Management Board are compliant with all applicable regulations.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>The Supervisory Board must itself ensure that it has all the necessary information to reach a free and informed decision. It should review the Target's valuation, the applicable financing terms, the main findings of the DD, the assessment of the associated risks for its various impacts on the Bidder by the Management Board as well as the grounds for the conclusions drawn by the Management Board. It should further call into question whether the transaction's structure could be further optimized and make sure that the Management did not forget to consider alternatives (using a typical checklist: asset deal vs share deal, feasible conditions precedent, merger control and other regulatory approvals (plus applicable timeframes), representations and warranties, deductibility of financing costs, possible goodwill amortization, reutilization of tax losses carried forward, tax-</p>

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	<p>optimized exit strategy, taxation of sale profit ...) and finally, whether the company's (future) existence - even in a worst-case scenario - would not be at risk.</p> <p>The Supervisory Board should ensure that the purchase agreement covers all identified risks and that closing is feasible as well as that all necessary steps are taken for an adequate mid- and long-term transition of the Target to the company's business.</p>
3.2 Appointment of an ad hoc committee	<p><u>Bidder and Target</u></p> <p>For the above mentioned reasons (in particular confidentiality and efficiency) the appointment of an ad-hoc committee is advisable.</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>Audit committees are mandatory only for joint stock companies which issued shares on a regulated market or which qualify as 'big companies' pursuant to sec 221(3) of the Austrian Business Code and exceed the following thresholds: (i) a balance sheet total of 20 million Euro, and (ii) a turnover of 40 million Euro in the twelve months preceding the balance sheet date. As an M&A transaction unquestionably poses entrepreneurial risks, the audit committee will review and assess the impact of the proposed transaction on the company.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>No.</p> <p>Austrian law provides for a strict one-third parity rule, which entitles the works council to appoint one member of the Supervisory Board for every two members appointed by the general meeting. This rule applies for the formation of subcommittees respectively.</p> <p>NB: The works council must be informed in detail about the intended changes in relation the employees in advance and may propose different measures.</p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>Supervisory Board members appointed by the works council are subject to the same confidentiality obligation and insider dealing regime as the members appointed by the shareholders.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and Target</u></p> <p>There is no general obligation for the Supervisory Board to appoint an independent expert unless an independent and informed decision in the best interest of the company would otherwise be impossible.</p> <p>Therefore, in particular in cases of conflicts of interest at the level</p>

Topic / Board's role	Austria
	<p>of the Management or the Supervisory Board, or of dealings with a shareholder, an independent expert should be appointed.</p> <p>For complex and high-impact transactions it is advisable for the Supervisory Board to obtain at least a fairness opinion unless an independent expert is appointed, if for nothing else but to limit the liability risks of the Supervisory Board.</p> <p><i>Under the Austrian Takeover Act, the Target's Supervisory Board is obligated to appoint an independent expert to review the target response statement(s) of the boards and issue an independent assessment of the bid.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>Any acquisition and sale of participation interests as well as the acquisition, sale, and suspension of enterprises and businesses are subject to prior Supervisory Board approval under Austrian statutory law. The Supervisory Board should pass a free and independent decision in the best interest of the company.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The decision of the Supervisory Board must be free and independent from any conflicting interest of its members. It should thus make sure that a conflicted member does not take part in the process and the final decision.</p>
<ul style="list-style-type: none"> Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>The decision of the Supervisory Board must be independent from any conflicting interest of the Management Board. The Supervisory Board should thus carefully investigate and eliminate possible conflicts between the company's best interest and the interest of any member of the Management Board before approving the transaction.</p>
<p>4.3 Publicity</p>	<p><u>Bidder and Target</u></p> <p>Public communication falls within the competences of the Managing Board.</p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>See above 3.1.</p>

Topic / Board's role	Austria
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p><i>The Supervisory Board should see to it that the Management Board aligns its activity only with the company's best interest under the stakeholder theory, considering the interests of (i) (all) shareholders, (ii) employees, (ii) creditors and (iv) the public.</i></p> <p><i>It should stay on top of the information and experience available in relation to specific activists, their strategy, willingness to escalate, as well as comparable history and use this knowledge to develop – together with the Managing Board – an action strategy on a case-to-case basis.</i></p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>Communication falls under the competence of the Managing Board.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Make sure that the transition and integration of Target's employees is put successfully in practice.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Ensure the Target's successful integration, in particular take care that:</p> <ul style="list-style-type: none"> • shareholder register is updated by the Management Board • members of the Boards are appointed/revoked in accordance with the successful Bidder's wishes • Target implements the successful Bidder's compliance regime.

BELGIUM

Filip Jorens - Gisèle Rosselle

Strelia

Topic / Board's role	Belgium
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In most Belgian companies, the majority of the voting shares – or at least a significant minority – is held by one or more controlling shareholders. Therefore, the controlling shareholder will be the natural negotiating partner. However, in some cases, the Bidder may contact the Board of the Target company to test the waters upfront.</p> <p>When the Board suspects the company could be the subject of a bid, it could, e.g., implement a general monitoring process and set up an effective dialogue with the main shareholders in order to get a good understanding of their objectives and concerns in this respect. The Board could also opt to implement/propose to implement measures as a defence strategy when confronted with the bidder's unfriendly or aggressive manoeuvres, etc.</p> <p>Upon receipt of an offer (binding or not), the Board of the Target should preferably be involved in the decision to enter (or not) into preliminary talks.</p> <p><u>Bidder</u></p> <p>Pursuant to Belgian Law, the Board is authorized to perform all acts that are considered necessary or useful to achieve the company's corporate purpose. As it is essentially a supervisory and governing body, the Board is competent to define the strategy of the company.</p> <p>The 2009 Belgian Code on Corporate Governance, which is a soft law instrument⁴³, also provides that the Board should decide on the company's values and strategy, its risk appetite and key policies (principle 1.2), and that the Board should at least review executive management performance and the realisation of the company's strategy (principle 1.3).</p> <p>Therefore, the Board should be involved as soon as possible in order to exercise its powers as intended by the Belgian (and European) legislators, i.e., to review any contemplated material transaction bearing the company's strategy in mind.</p>

⁴³ Despite it being a soft law instrument, Belgian listed companies must refer to this Belgian Code on Corporate Governance 2009 as a code of reference within the meaning of Article 96, § 2, 1° of the Belgian Company Code, and this for the purpose of implementing into Belgian law the European Directive 2006/46/EC introducing the corporate governance statement.

Topic / Board's role	Belgium
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Any member of the Board that has a conflict of interest should inform the other members of the Board thereof and strictly follow the procedure as set out in Article 523 of the Belgian Company Code. <i>In listed companies, such Board member should refrain from attending (or voting at) the relevant meetings in this respect.</i></p> <p>The vast majority of specialised doctrine under Belgian law considers that the legal provisions regarding conflicts of interests should apply even in the light of a potential take-over.</p> <p><i>For listed companies, privileged information will create an insider dealing situation for Board members (see 2.4 below).</i></p> <p><i>For listed companies, and pursuant to Article 524 of the Belgian Companies Code, a specific sub-committee composed of three independent directors and an independent expert must be set up to give preliminary advice to the Board if a controlling shareholder were to gain a material financial advantage.</i></p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>The Articles of Association (or other internal regulations) could provide rules on how to organise the Board's involvement, but this is not standard practice.</p> <p>Specific ad-hoc working groups are often set up to organise strategic transactions. These (informal) working groups have more flexibility to work and meet frequently than a full Board. The composition of a working group depends largely on the specific needs of the transaction and could include members of the management, the Board, or even outsiders.</p> <p>The creation of formal sub-committees or ad-hoc committees of the Board to monitor, assess, or review strategic transactions is rather rare and generally limited to large size companies.</p>
<p>1.4 Need for Special committee(s)?</p>	<p>The 2009 Belgian Code on Corporate Governance (soft law) provides, as a general rule, that the Board should set up specialised committees to analyse specific issues and advise the Board on those issues. However, as already mentioned above under 1.3, formal sub-committees or ad-hoc committees of the Board are rarely created for the purpose of monitoring strategic transactions. Internal working groups are standard practice though.</p> <p><i>For listed companies, a specific sub-committee composed of three independent directors and an independent expert must be set up to give preliminary advice to the Board if a controlling shareholder were to gain a material financial advantage (see Section 1.2).</i></p>

Topic / Board's role	Belgium
	<p>The existing sub-committees, such as an audit committee or any strategic committee could be involved in the strategic transaction process.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>As it is the Board's role to decide on the company's values and strategy, Board members have to be involved – periodically – in the strategy reviews. A proactive involvement of the Board for strategic transactions is thus recommended.</p> <p>Purely preliminary talks could be held at management level, notably for confidentiality reasons, as long as the executive management provides the Board in due time with all information necessary to carry out its duties (see also principle 6.5 of the 2009 Belgian Code on Corporate Governance).</p> <p><u>Target (in case of preliminary talks with Target's Management)</u></p> <p>The Bidder's first contacts will generally be made with the controlling shareholders or with the executive management of the Target.</p> <p>In practice, the Board of the Target will be involved in the talks once the Bidder is expecting preliminary commitments from the Target, such as the commitment to grant exclusivity or to cooperate in certain undertakings, to grant access to certain confidential documents, etc.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Board members have a general duty to ensure the protection of confidential data.</p> <p>This is important when, e.g., information is requested by the Bidder during its negotiations with the Target. Board members will then have to make sure that all necessary protective measures are put in place (e.g., adequate NDAs/confidentiality agreements).</p> <p><i>In listed companies, Board members are considered as primary insiders and therefore bound by strict confidentiality obligations in order to ensure a level playing field on the relevant market (cfr. insider trading and market abuse regulations).</i></p> <p><i>In addition, appropriate mechanisms should be put in place to monitor any leakage of confidential/sensitive information. In case of any leakage, such information should be immediately disclosed</i></p>

Topic / Board's role	Belgium
	<i>to the public.</i>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>The Board should ensure all communications are made effectively to the media.</p> <p><i>For listed companies, any leakage of sensitive information should be immediately disclosed to the public (see also 2.2).</i></p> <p><i>If the Target has not been previously approached (hostile tactics), the Target's Board may request from the FSMA (the Belgian Financial Services and Markets Authority) that it take appropriate measures to require companies/investors, who are suspected of preparing a transaction, to issue a press release ("put up shut up" procedure).</i></p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p>YES.</p> <p>The Chairman of the Board shall remind directors of their abstention obligations.</p> <p><i>For listed companies, members of the Board are legally considered as primary insiders, and their names must be recorded on an insider list.</i></p> <p><i>Pursuant to the 2009 Belgian Code of Corporate Governance (soft law), the Board should draw up a set of rules (a so-called Dealing Code) regulating transactions and the disclosure of transactions pertaining to the company's shares, derivatives, or other financial instruments linked to them, which is to be carried out by directors on their own behalf and by other persons having managerial responsibilities. The Dealing Code should specify which information regarding those transaction should be disclosed to the market.</i></p>
<ul style="list-style-type: none"> Vis-à-vis other individuals potentially involved 	<p>NO.</p> <p>This is a duty for the executive management members. However, the Board might want to review how appropriate measures can or should be put in place by the management.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>As the Board has the duty to decide on the company's strategy, it should make a thorough assessment of any proposed deal that could or will have a (material) strategic impact.</p>

Topic / Board's role	Belgium
	<p>In particular, the Board should (i) review all aspects of the proposed deal that could possibly impact the company's values, strategy, key policies and risk management, and (ii) make the necessary adjustments to ensure an adequate global protection of the company as the deal goes forward.</p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and/or Target</u></p> <p>The 2009 Belgian Code on Corporate Governance (soft law) provides that the Board should set up specialised committees to analyse specific issues and advise the Board on those issues. However, formal ad-hoc committees of the Board are rarely created for the purpose of monitoring strategic transactions. Internal working groups are standard practice though (see Section 1.3).</p> <p><i>For listed companies, a specific sub-committee composed of three independent directors and an independent expert must be set up to give preliminary advice to the Board if a controlling shareholder were to gain a material financial advantage (see Section 1.2).</i></p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>The audit committee assesses the impact of a proposed strategic transaction on the company financial statement and its potential risk in terms of financial structure.</p> <p>The executive management should inform the audit committee of the methods used to account for significant and unusual transactions in which the accounting treatment can be open to different approaches.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>In Belgium, employee representatives do not attend Board meetings or meetings of special committees of the Board.</p> <p>In mid-sized and large companies, interactions between the (executive) management and employee representatives take place at the level of the Works Council. Members of the Works Council have the same confidentiality duties as members of the Board with respect to the information received during the exercise of their mandate.</p> <p>The Works Council should be consulted and its advice should be sought on certain contemplated strategic transactions.</p> <p><i>E.g.: in case of a public offer, the Works Council must give its opinion on the offer, especially the consequences of the offer from an employment perspective. This opinion is annexed to the Board's opinion on the public offer.</i></p>

Topic / Board's role	Belgium
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>Board members and members of the Works Council are considered to be insiders who are bound by strict confidentiality obligations, as they have access to sensitive undisclosed information about the company.</p> <p><u><i>In listed companies, any communication of sensitive and undisclosed information is considered to be market abuse and is subject to criminal and administrative sanctions.</i></u></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>Independent experts are often consulted in the context of a strategic transaction (i) for information purposes: as a tool for the executive management/directors to get a better insight into the contemplated transaction, and (ii) to limit the risks and liabilities attached to these transactions.</p> <p><i>For listed companies, a specific sub-committee composed of three independent directors and an independent expert must be set up to give preliminary advice to the Board if a controlling shareholder were to gain a material financial advantage (see Section 1.2).</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>Board approval will generally be required for any strategic transaction that bypasses the daily management of the company. In practice, specific provisions thereto are set out in the Articles of Association the company.</p> <p>In any case, the Board may review every transaction <i>a posteriori</i> on its compliance with the company's strategy.</p> <p><i>In case of a take-over bid, the Target's Board must issue a reasoned opinion on the pros and cons of the bid, its consequences for the company, its shareholders and employees. The Bidder's Board may issue a similar opinion. These opinions are disclosed in the public offer documentation.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The Board should review any situation that causes (or can cause) a conflict of interest in relation to the transaction between Bidder and Target.</p> <p>More in general, the Board should establish a policy for transactions or other contractual relationships between the company, including its related companies, and its Board members that are not covered by the legal provisions on conflicts of interests.</p>

Topic / Board's role	Belgium
<ul style="list-style-type: none"> • Vis-à-vis executives 	Same as for directors.
4.3 Publicity	<i>Bidder and Target should ensure that an appropriate plan (for internal and external communication) is in place.</i>
4.4 Merits	<p><u>Bidder and Target</u></p> <p>The decision of the Board should be justified and should contain an analysis of the transaction/bid and all key aspects of it (e.g., why is the Board of the opinion that the transaction serves the corporate purpose of the company?).</p> <p><i>Mandatory in case of a public take over.</i></p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p><i>The 2009 Belgian Code on Corporate Governance recommends that a disclosure and communication policy promoting an effective dialogue with shareholders and potential shareholders be drafted.</i></p> <p><i>Such policy should allow the Board (i) to closely monitor the shareholders' needs, (ii) to anticipate – in due time – the growing frustrations among shareholders, and (iii) to search for a balanced compromise.</i></p> <p><i>Clear and timely communication are key in preventing the situation from derailing.</i></p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>Ideally, Bidder and Target both review and approve the press releases relating to the transaction.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure commitments are complied with.</p> <p><i>In case of a public offer, Board representatives of the Bidder should be heard by the Target's Works Council ultimately ten (10) days after the acceptance period of the offer starts to run.</i></p>
7.2 Vis-à-vis company	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure integration plans are implemented.</p>

BRAZIL

Rodrigo Ferreira Figueiredo

Mattos Filho

Please note that not all companies in Brazil have a Board of Directors, since not all corporate types have this structure. All listed companies, however, must have Board of Directors.

Topic / Board's role	Brazil
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Target is usually unaware of Bidder's intention until contacted by Bidder's representatives. Discussions may be held between Target's and Bidder's management to test the waters beforehand.</p> <p><i>Measures aiming at preventing a hostile takeover, such as the inclusion of poison pills in the relevant company's by-laws, are common among listed companies.</i></p> <p><u>Bidder</u></p> <p>Although there is no specific rule on this matter, Bidder's board is usually involved in the earlier stages of the transaction, sometimes being the body responsible for evaluating and approving the terms of the proposal.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Target and Bidder</u></p> <p>Board members are subject to statutory confidentiality obligation preventing them from disclosing confidential information to third parties. Interlocking boards may pose a problem, since the members in common are subject to statutory confidentiality and loyalty obligations towards all companies in which Boards they participate.</p> <p>Members of the Board with a conflicting interest should inform the chairman of the Board and refrain from attending (or voting at) relevant meetings. The nature and extension of the conflict should be indicated in the relevant minutes of the Board meeting.</p> <p><i>Moreover, any person (including a Board member) that becomes aware of an undisclosed material fact related to a listed company cannot trade with such company's securities based on a general insider trading prohibition.</i></p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Target and Bidder</u></p> <p>Except in large listed companies, involvement of the Board is governed by <i>ad hoc</i> rules, in addition to applicable statutory and internal (general) procedural rules. Legal and financial advisors</p>

Topic / Board's role	Brazil
	<p>usually assist the Board in setting up an action plan for the next steps in the transaction.</p> <p>Committees or other similar bodies to assist the company's management may be created by amending the company's by-laws or by decision of the Board (in this latter case, the members of such committee would not be subject to statutory duties, such as confidentiality, and, therefore, contractual obligations should be put in place to replicate such duties).</p>
<p>1.4 Need for Special committee(s)?</p>	<p><u>Target and Bidder</u></p> <p>Although there is no rule requiring a special committee to be set up, rules regarding conflict of interests applicable to a company's management may lead to the conclusion that a special committee (usually formed by independent members) is the best way to guarantee compliance with such rules.</p> <p><i>In transactions involving a listed company, on one hand, and controlled companies, parent companies, or companies under common, on the other hand, the Comissão de Valores Mobiliários ("CVM")⁴⁴ has recommended that, in order to ensure compliance with management's fiduciary duties, the relevant transaction must either be subject to approval by the non-controlling shareholders or be negotiated and evaluated by a special committee composed mainly of independent members.</i></p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Target and Bidder</u></p> <p>Board members of both companies are usually involved in strategic moments of the negotiations (e.g. preparing and evaluating a preliminary proposal). Higher executives may also be included in the discussions to provide more detailed information on the company's operations, and assist in the drafting or evaluation of terms of the transaction.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Target and Bidder</u></p> <p>Board members and managers appointed pursuant to the rules of the company's by-laws are subject to statutory confidentiality obligation preventing them from disclosing confidential information to third parties.</p> <p><i>Board members of listed companies are primary insiders and, as such, are subject to stricter prohibition to negotiate with the company's securities using information not available to the public.</i></p>

⁴⁴ CVM is the Brazilian equivalent to the U.S. Securities and Exchange Commission.

Topic / Board's role	Brazil
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Target and Bidder</u></p> <p>Leakage and rumours are typically not an issue for private companies.</p> <p><i>A public company involved in a transaction has the obligation to disclose via a press release all leaked sensitive information in order to ensure proper disclosure to the market. In this regard, CVM recommends listed companies to have emergency plans in case sensitive information is leaked, including preparing a press release beforehand in the languages of all the countries where the company's securities are traded.</i></p> <p><i>In case of articles published in the press, the companies should act promptly to either confirm or refute its contents. In case no measure is taken by the company, CVM may order the company to comment, notwithstanding CVM's ability to hold the company's management (usually the Investor Relations Officer) liable for breach of regulatory obligations in this regard.</i></p>
<p>2.4 Prevention of insider dealing</p>	
<ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><u>Target and Bidder</u></p> <p><i>Public companies are required to have a trading policy, applicable to all members of its management (among other persons), setting forth the rules and exceptions for trading with its securities.</i></p> <p><i>Moreover, any person (including a Board member) that becomes aware of an undisclosed material fact related to a listed company cannot trade with such company's securities based on a general insider trading prohibition.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Target and Bidder</u></p> <p>Board members are expected to thoroughly review the terms of the proposal in order to comply with their statutory duties of care and loyalty.</p> <p><i>In case of a public tender offer, if Target's securities are listed in certain special listing segments of the São Paulo Stock Exchange, the Target's Board must evaluate specific points of the proposal and provide a clear suggestion to the company's shareholders either to accept or refuse the public tender offer.</i></p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Target and Bidder</u></p> <p>Not mandatory or common practice, although may be advisable</p>

Topic / Board's role	Brazil
	<p>depending on the actual circumstances in order to ensure efficiency and compliance with fiduciary duties.</p> <p><i>For listed companies, the creation of a special committee may be strongly suggested under certain circumstances (please refer to item 1.4 above).</i></p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Target and Bidder</u></p> <p>In Brazil, except for larger listed companies, the audit committee (<i>Conselho Fiscal</i>) tends to be more reactive and just be called in case of transactions which involve an operation about which it is legally required to comment (e.g. capital increases, merger, spin-offs). The audit committee's opinion is not binding, though an unfavorable opinion may be used as additional evidence of breach of the managers' statutory duties and increase the risk of managers being held liable for such breach.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	<p><u>Target and Bidder</u></p> <p>Except in the case of state owned companies, employees generally do not have the right to a seat on the Board.</p> <p>Employees' representatives in the Board are subject to the same statutory confidentiality obligation as other Board members, preventing them to disclose confidential information to third parties.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p><u>Target and Bidder</u></p> <p>Not common for private companies.</p> <p>Certain transactions require the issuance of a valuation report, but the scope of such report is usually limited to formal requirements (e.g. valuation of a merged company's assets and liabilities according to their book value).</p> <p><i>For Target listed companies receiving a public tender offer and listed in certain special listing segments of the São Paulo Stock Exchange, it is strongly recommended that independent experts (usually legal and financial advisors) are hired by the Board to assist it in issuing its opinion on the terms of the offer.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Target and Bidder</u></p> <p>Approval of the transaction by the Board (or even the shareholders) may be required by law depending on the structure of the transaction.</p> <p><i>In case of a public tender offer, if Target is listed in certain special</i></p>

Topic / Board's role	Brazil
	<i>listing segments of the São Paulo Stock Exchange, the Target's Board must evaluate specific points of the offer and provide a clear suggestion to the company's shareholders either to accept or refuse the offer.</i>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Target and Bidder</u></p> <p>Members of the Board with a conflicting interest should inform the chairman and refrain from attending (or voting at) the relevant meetings. The nature and extension of his conflict should be indicated in the relevant minutes of the Board meeting.</p> <p>Executives appointed pursuant to the rules of the company's by-laws are subject to statutory loyalty obligations preventing them from participating in transactions in which they have a conflicting interest.</p>
<p>4.3 Publicity</p>	<p><u>Target and Bidder</u></p> <p>All Board's decisions which effects are to be enforceable against third parties must be published in the official gazette and in a newspaper with broad circulation, and registered in a Board of Trade, becoming publicly available.</p>
<p>4.4 Merits</p>	<p><u>Target</u></p> <p><i>In case of a public tender offer, if Target is listed in certain special listing segments of the São Paulo Stock Exchange, the Target's Board must evaluate specific points of the proposal and provide a clear suggestion to the company's shareholders either to accept or refuse the offer.</i></p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Target and Bidder</u></p> <p><i>Shareholders and third parties may file complaints with CVM requesting it to investigate possible violations of applicable laws and regulations by the company's management. This can be used as a pressure mechanism to try to influence managers' behavior.</i></p> <p><i>The investor relations departments usually keep close contact with shareholders holding material percentages of equity interest to try to anticipate possible adverse reactions.</i></p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Target and Bidder</u></p> <p>Not much of an issue with private companies.</p> <p><i>Listed companies are required to have a disclosure policy setting forth rules applicable to situations in which a material fact should be disclosed to the market. CVM has indicated that it expects this</i></p>

Topic / Board's role	Brazil
	<i>policy to include, among other things, rules regarding the timing of disclosure, contingency plans in case of leakage, and internal controls to ensure that the disclosure is made in an orderly and timely fashion.</i>
7. Duties post transaction 7.1 Vis-à-vis employees	<p><u>Target and Bidder</u></p> <p>Although there is no specific obligation of Board members towards the company's employees, pursuant to Brazilian law changes in a company's structure (e.g. change of control, merger, spin off) do not affect the employees' rights and benefits.</p>
7.2 Vis-à-vis company	<p><u>Target and Bidder</u></p> <p>Companies' management must have ensured that all their duties and obligations have been complied with during the process.</p>

CANADA

Alfred Buggé

Borden Ladner Gervais

In Canada, corporate laws provide that the business and affairs of a company are managed by a board of directors who must discharge its obligations at all times, including in its consideration of any potential or definitive M&A transaction, in accordance with its duty of loyalty and duty of care. In addition, depending on the circumstances, the board of directors must comply with certain securities law requirements.

Topic / Board's role	Canada
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In accordance with securities laws, Canadian securities regulators have recognized that while the valid exercise of a board's corporate law fiduciary duties may justify the use of defensive tactics, a target company is prohibited from adopting permanent defensive tactics or adopting measures which prevent shareholders of the target company from considering a take-over bid.</p> <p>Canadian securities regulators have been of the view that defensive tactics such as poison pills should only serve as a temporary measure to provide the board enough time to seek a higher alternative transaction for its shareholders. However, a recent ruling of the Supreme Court of Canada suggests that Delaware <i>Revlon</i> duties don't apply in Canada and that a board may adopt permanent defensive tactics considering the board's duty of loyalty is to act in the best interests of only the company, even in the context of an M&A transaction.</p> <p>In response to these conflicting positions, Canadian securities laws have been amended effective June 2016 to require that unsolicited / hostile bids remain open for a minimum of 105 days (subject to prescribed exceptions), a significant increase from the previous 35 days.</p> <p><u>Bidder</u></p> <p>Canadian corporate laws provide that the business and affairs of a company are managed by a board of directors who must discharge its obligations at all times, including in its consideration of any potential or definitive M&A transaction.</p> <p>In the discharge of such obligations, the board has a fiduciary duty of loyalty to act in the best interests of the company and a duty of care to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. As such, a board must be review a potential M&A transaction.</p>

Topic / Board's role	Canada
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>A director or an officer of a corporation shall disclose to the corporation the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the corporation and shall not vote on any resolution to approve the contract or transaction.</p> <p>Directors are obliged to keep confidential any potential M&A transaction in accordance with their duty of loyalty to act in the best interests of the company. In general, directors are obliged to adhere to by-laws and a code of ethics adopted by a company dealing with confidentiality. Finally, securities laws prohibit any person from tipping material non-public information, including a potential M&A transaction. As such, all directors of a company are typically made aware of a potential M&A transaction in order to allow them to properly discharge their duties. While the establishment of a special committee is not obligatory, subject to exceptions described further below, such committees have included directors with appropriate expertise to manage a potentially long M&A transaction process.</p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <p>See section 1.2 regarding conflict of interests and confidentiality issues.</p> <p>See section 1.2 regarding special committees. In the context of an insider take-over bid, Canadian securities laws require that a special committee consisting exclusively of independent directors be established to select an independent valuator and to supervise the preparation of a valuation report by an independent valuator. Such laws provide similar obligations in the context of an issuer bid, related party transaction or business combination, however the responsibilities are assumed by either the board of directors or an independent committee.</p> <p>A recent Supreme Court of Canada case provides that a board's duty of loyalty is to act in the best interests of only the company, even in the context of an M&A transaction. In the discharge of such duty, the directors may consider other stakeholder interests such as shareholders, employees, creditors, consumers, governments and the environment. Corporate laws also provide for oppression remedies to various stakeholders who feel that a corporation's or directors' actions or omissions are oppressive or unfairly prejudicial to or that unfairly disregard their interests. As such, it is important to carefully construct minutes of meetings drafted in a manner that reflects an active and fully-informed decision-making process.</p>
1.4 Need for Special	While the establishment of a special committee is not obligatory

Topic / Board's role	Canada
committee(s)?	<p>(subject to exceptions described further below), such committees have included directors with appropriate expertise to manage a lengthy M&A transaction process.</p> <p>Moreover, in order to remove any appearance of an inherent conflict of interest or entrenchment of management, Boards in Canada have in many cases voluntarily established independent committees notwithstanding the absence of any conflict of interest or non-arm's length transaction.</p> <p>In the context of an insider take-over bid, Canadian securities laws require that a special committee consisting exclusively of independent directors be established to select an independent valuator and to supervise the preparation of a valuation report by an independent valuator.</p> <p>Such laws provide similar obligations in the context of an issuer bid, related party transaction or business combination, however the responsibilities are assumed by either the board of directors or an independent committee.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p>Board members will be involved regularly on the strategy reviews but less likely to be proactively involved during preliminary talks for confidentiality reasons.</p> <p>Please refer to section 1.2 regarding a Board's confidentiality obligations.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p>Yes.</p> <p>Canadian privacy laws also require that personal information of individuals, particularly of management and employees, are protected in the context of any potential M&A transaction. Directors are obliged to keep confidential any potential M&A transaction in accordance with their duty of loyalty to act in the best interests of the company. In general, directors are obliged to adhere to by-laws and a code of ethics adopted by a company dealing with confidentiality. Finally, securities laws prohibit any person from tipping non-public material information or trading based on non-public material information, including a potential M&A transaction.</p> <p>Any access to a data room or other confidential information of the target company will be preceded by the execution of an NDA containing customary standstill provisions.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p>Boards in Canada don't have to respond to leaks or rumours. While a Canadian securities regulator may contact a company regarding leaks or rumours, a company will not be obliged to issue any press</p>

Topic / Board's role	Canada
	<p>release related thereto unless there has been a material change. Moreover, Canadian securities laws and stock exchange rules prohibit the pre-mature issuance of press releases which could be misleading</p> <p>Canadian securities regulators have provided that in the context of a potential M&A transaction, unless there is sufficient evidence by which the board could conclude that there is a sufficient commitment from the parties to proceed, the publication of a press release is typically only required upon the execution of a definitive acquisition agreement.</p>
2.4 Prevention of insider dealing	
<ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<p>Directors are obliged to keep confidential any potential M&A transaction in accordance with their duty of loyalty to act in the best interests of the company. In general, directors are obliged to adhere to by-laws and a code of ethics adopted by a company dealing with confidentiality.</p>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<p>Finally, securities laws prohibit any person from tipping material non-public information or trading based on material non-public information, including a potential M&A transaction.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>A board's duty of care under corporate law requires it to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on an independent report, such as a formal valuation or fairness opinion. As such, the Board should be able to demonstrate that it was fully informed and took an active role in the decision-making process by documenting its process and the reasons for its decisions. Such duties extend throughout the M&A transaction process, including documented reviews of draft acquisition agreements.</p>
3.2 Appointment of an ad hoc committee	<p><u>Bidder and/or Target</u></p> <p>Advisable (see Sections 1.4 above)</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p>In Canada, while there isn't any express legal obligations to have the audit committee involved in a potential M&A transaction, directors should include the audit committee in its list of experts to consult along with independent financial and legal advisors in order to properly discharge its duty of loyalty and duty of care</p>
3.4 Employee representatives (if any on the board)	<p>This or anything similar does not apply in Canada.</p>

Topic / Board's role	Canada
<ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	<p>A recent Supreme Court of Canada case provides that a board's duty of loyalty is to act in the best interests of only the company, even in the context of an M&A transaction. In the discharge of such duty, the directors may consider the interests of various stakeholders, including employees. Corporate laws also provide for oppression remedies to various stakeholders who feel that a corporation's or directors' actions or omissions are oppressive or unfairly prejudicial to or that unfairly disregard their interests. As such, it is important to carefully construct minutes of meetings drafted in a manner that reflects an active and fully-informed decision-making process.</p> <p>In the proper discharge of a board's duty of care, a board can consult the expertise of management or other employees of the company in the context of an M&A transaction. Such consultations would be exempt from prohibitions related to tipping / disclosure of material non-public information pursuant to Canadian securities laws.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p>Yes.</p> <p>While there is no express obligation for a board or special committee to retain the services of an independent financial advisor to prepare a fairness opinion, such measures are typically undertaken in the proper discharge of a director's duty of care.</p> <p>In the context of an insider take-over bid, Canadian securities laws require that a special committee consisting exclusively of independent directors be established to select an independent valuator and to supervise the preparation of a valuation report by an independent valuator. Similar obligations apply in the context of an issuer bid, related party transaction or business combination, however the responsibilities are assumed by either the board or an independent committee.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>In accordance with corporate laws and by-laws and director's duty of care, board approval of a significant M&A transaction is required.</p> <p>Securities laws require that a target company's director circular provide a board's reasoned recommendation to shareholders to, in particular, accept or reject the take-over bid.</p>

Topic / Board's role	Canada
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>The necessity of the Board's review comports with its fiduciary duties and Canadian securities laws which prohibit the granting of any collateral benefits in the context of a take-over bid and which regulate insider bids, related party transactions and other conflicting transactions.</p>
<p>4.3 Publicity</p>	<p><i>Bidder and Target should ensure that an appropriate plan (for internal and external com) is in place.</i></p>
<p>4.4 Merits</p>	<p>See section 4.1</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p>Considering the (i) significant increase in proxy contests in Canada in recent years, (ii) TSX rules which prohibits staggered boards, requires listed issuers to provide for the election of directors individually and not by way of a slate and for each director to obtain a majority of shareholder votes when elected, (iii) Canadian corporate laws which allow one or more shareholders to requisition a shareholders' meeting or to submit shareholder proposals in a meeting, the Board should consider implementing certain defensive measures such as the adoption of an advanced notice by-law which requires dissident shareholders to submit a notice of director nomination and detailed information about proposed new director nominees and dissident shareholders to the company prior to a shareholders' meeting.</p> <p>The Board should consider establishing an independent committee to avoid any appearance of director/management entrenchment and to supervise a potentially lengthy activist process.</p> <p>The target company's messages should be consistent and timely along with establishing defined roles of the board, the independent committee and any settlement compromise.</p> <p>The Board and independent committee should prepare for meetings with leading proxy advisory services such as Glass, Lewis & Co. and Institutional Shareholder Services (ISS).</p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p>Review of press releases are typically conducted by the board and a special committee, if applicable.</p> <p>M&A transaction agreements will customarily include provisions which require the bidder and target to exchange prior reviews of draft press releases.</p> <p>While not obligatory, the retention of a PR agency may be relevant</p>

Topic / Board's role	Canada
	depending on the size/complexity of the transaction, its impact on, in particular, the local economy and other factors such as the type of industry.
7. Duties post transaction 7.1 Vis-à-vis employees	<p>In Canada, no such requirements apply, unless express commitments are provided for in M&A transaction related agreements. A recent Supreme Court of Canada case provides that a board's duty of loyalty is to act in the best interests of only the company, even in the context of an M&A transaction. In the discharge of such duty, the directors may consider the interests of various stakeholders, including employees.</p> <p>Corporate laws also provide for oppression remedies to various stakeholders who feel that a corporation's or directors' actions or omissions are oppressive or unfairly prejudicial to or that unfairly disregard their interests. As such, it is important to carefully construct minutes of meetings drafted in a manner that reflects an active and fully-informed decision-making process.</p>
7.2 Vis-à-vis company	Securities laws require a bidder's take-over bid circular to include disclosure related to plans for material changes in the affairs of the target company, including, for example, any proposal to liquidate the target company, to sell, lease or exchange all or a substantial part of its assets, to amalgamate it with any other business organization or to make any material changes in its business, corporate structure (debt or equity), management or personnel.

CHILE

Dovile Burgiene

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Topic / Board's role	Chile
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In the majority of cases, during the early stages of the transaction the Target is not involved and the negotiations take place at the seller/controlling shareholders level. Therefore, usually the Board is not involved in the decision on whether to enter or not into preliminary talks.</p> <p>Usually, the Target gets involved when the negotiations are at a stage that require the Target to provide certain information to the Bidder for confidential marketing materials or due diligence. At that point, the Board may get involved in the discussion process.</p> <p><i>Also, in listed companies the existence of potential transaction talks shall be disclosed to the market when there is an exchange of non-public information of the Target. At that point, the Board of the Target should get involved in order to approve such exchange of information and/or to report the negotiations to the regulator, which under certain requirements can be made on a temporary confidential basis (see 4.3 Publicity).</i></p> <p>Note that although hostile takeovers are permitted in Chile, they are unusual due to the fact that most companies have a clear controlling shareholder. Even in these unusual cases, the role of the Board is very limited and there is no duty to negotiate better terms, implement defensive strategies or seek competitive offers.</p> <p><u>Bidder</u></p> <p>Under Chilean Law, any decision regarding the future strategy of the company is within the authority of the board.</p> <p>Usually, there are no specific predefined strategies by the board that may require prior approval of the same for transactions outside the scope of such predefined strategies. However, note that most of the companies annually approve business plans that contain in general terms the strategies of the company for the immediate following years. If a transaction significantly affects or departs from the business plan, or if the amount of a specific transaction exceeds the amount that the management is authorized to approve, it is common under best practices that the board reviews such strategic transaction before the Bidder enters into any binding commitment or agreement.</p>

Topic / Board's role	Chile
1.2 How to cover confidentiality issues within the board?	<p><u>Bidder and Target</u></p> <p>Chilean Corporations Law provides a general duty of confidentiality to board members (article 43, Chilean Law 18,046 on Corporations). Any member of the board that has a conflict of interest should inform the chairman and refrain from attending (or voting at) relevant meetings</p> <p>With a three-quarters vote of the directors in exercise, the Board may declare that certain information relating to ongoing negotiations is reserved and that it should not be included within the documentation that must mandatorily be made available to the market.</p> <p><i>For listed companies, there is a special regulation of insider trading in the securities market law and directors are presumed to have inside information in certain cases.</i></p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <p>It is not common to have established procedures in place to organize the board's involvement. Chilean law only provides that the Board members have the right to be informed (in a complete and documented way) by the general manager regarding everything related to the progress of the company. Also, the law provides that the discussions and resolutions of the board shall be registered in book of minutes evidencing a consistent and orderly process review.</p> <p>Some additional measures that can be put in place include:</p> <p>Drafting of internal policies.</p> <p>Setting up specific committees, which are contemplated by law, and which can meet with more flexibility and frequency than the full board.</p> <p>Appointing experts that can assist the board or the committees in the different aspects of the strategic transaction being analyzed.</p>
1.4 Need for Special committee(s)?	<p>It is not common for board of directors in Chile to establish permanent special committees in charge of following preliminary talks and advising on strategic transactions. <i>Although for certain listed companies the law requires the designation of one independent director and a committee of directors that are entrusted with several functions (including audit committee functions), it is not within the functions of such committee to follow the preliminary talks of a strategic transaction and the transaction in progress.</i> However, committees are contemplated in the law so nothing prevents a board of directors to set up a specific committee in charge of following preliminary talks and the progress of a</p>

Topic / Board's role	Chile
	strategic transaction.
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>Board members will be involved on the strategy review but unlikely to be proactively involved during preliminary talks.</p> <p><u>Target (in case of preliminary contacts with Targets' management)</u></p> <p>May be difficult to avoid if the Bidder wishes:</p> <ul style="list-style-type: none"> • to have access to a data room before any firm commitment, in order to assess its own valuation of the Target and its forecast regarding future contingencies; • to ensure that the Target will cooperate, in case of antitrust issues; • to seek exclusivity undertakings from the Target company.
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Yes. Chilean laws provide a general duty of confidentiality regarding any business and information to which board members have access due to their position. This confidentiality duty ceases when the information is officially disclosed by the company. <i>Special and stricter regulation of confidentiality duties is provided for listed corporations.</i></p> <p>The confidentiality duty also ceases if such confidentiality harms the company's interests or the information is related to acts or omissions which breach the bylaws, regulations or laws.</p> <p>As part of their duty of care, board members usually require that protective measures are put in place, such as execution of NDAs prior to enter into preliminary talks, restrictions in the access to data room, etc.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>Board should make sure appropriate crisis press releases are in place. It is common for the board to retain a communications agency to provide advice on how to manage potential communication issues in cases of potential leakage or rumours in the press.</p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>

Topic / Board's role	Chile
<ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p>Yes, board members have a prohibition to use, on their benefit or third parties benefit, commercial opportunities of which they have had access due to their position.</p> <p><i>Securities laws contemplate insider dealing regulations. Directors are presumed to have access to inside information.</i></p> <p>Yes, confidentiality duty of directors is established in order to prevent information regarding a potential transaction be used by other individuals. Both board members and management are subject to this confidentiality duty.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>The Board should review the financial/strategic/commercial aspects of the proposed deal (Target's valuation, synergies, impact on financial structure and accounts, execution risks, impact on agreement which change of control clause, etc.)</p> <p>It should also review the main findings stemming from the due diligence to discuss with the management how the risks identified in the DD are being addressed (off balance sheet commitments, potential impact on customers, key management, retention, environmental risks, material litigation, etc.).</p> <p>Board should also ensure that:</p> <ul style="list-style-type: none"> • The acquisition contract's terms adequately cover the risks identified and ensure secure path to closing; and • Appropriate retention plans are in place or being prepared.
<p>3.2 Appointment of an ad hoc committee</p>	<p>It is not common to appoint an ad hoc committee. The law only requires that listed companies of a certain size have a specific committee, which members shall be, in its majority, independent directors. Such committee will only be involved in reviewing a relevant transaction if such transaction involves a conflict of interest regarding a board member, a key executive or related person to those.</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p>The committee of directors described above also performs audit functions. However, such functions are more day to day functions and the committee is not responsible for assessing the impact of a proposed transaction on the company's financial statements and its potential risks in terms of financial structure. However, nothing prevents to submit for its consideration a specific transaction. If the company does not require to have a committee of directors, the law contemplates the possibility for the board to appoint a committee,</p>

Topic / Board's role	Chile
	which can be entrusted with such audit functions,
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	Not applicable according to Chilean Law.
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p><u>Bidder and/or Target</u></p> <p>Recommended for transactions which affects the structure of Bidder, Target or both, or when there is a potential conflict of interest.</p> <p><i>In listed companies of a certain size and with disseminate share capital, the committee of independent directors (see point 1.2 above) shall provide a report on any transaction with related parties. Such report is delivered to the board and to the shareholders.</i></p> <p><u>In listed companies or their subsidiaries</u>, transactions with related parties shall be agreed by the majority of the directors (excluding those which have conflict of interest).</p> <p><i>If the majority of the board has a conflict of interest, the transactions shall be agreed by the unanimous decision of the rest of the directors or by shareholders holding at least two thirds of the issued shares.</i></p> <p><i>In the event that a shareholders meeting is summoned to approve the transaction, the board shall appoint at least one independent evaluator to inform the shareholders on the terms, effect and potential impact of the transaction. If the committee of independent directors does not agree with the chosen independent evaluator, it may appoint an additional independent evaluator.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>Board opinion will be advisable before raising any transaction to the shareholders meeting. <i>In listed companies, when they are the subject of a takeover bid, each director, individually, shall issue a report with their opinion on the convenience of such bid for the Target's shareholders. In such report each director shall state his relation with the Target's controller and with the Bidder, and his personal interest on the transaction. This report shall be made available to the public along with the public offer documents.</i></p>
<p>4.2 On conflicts of interests</p>	<u>Bidder and Target</u>

Topic / Board's role	Chile
<ul style="list-style-type: none"> • Vis-à-vis board members 	<p>Transactions in which actual or potential conflict of interest involving directors exist shall be known and approved by the Board without the involved director. No need of Board approval is needed if shareholders holding at least two thirds of the issued shares approved such transaction.</p> <p><i>In listed companies, each director shall state his/her opinion regarding the convenience of the transaction and disclose any eventual interest that they may have in it. If the majority of the directors are involved in a transaction, such transaction shall be approved by the unanimity of the rest of the directors or by shareholders holding at least two thirds of the issued shares. Additionally, the Board decision shall be informed in the next shareholders' meeting, indicating the directors who vote for its approval.</i></p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	Same as for directors.
<p>4.3 Publicity</p>	<p><u>Bidder and Target</u></p> <p><i>Bidder and Target should ensure that an appropriate plan (for internal and external communication) is in place</i></p> <p><i>Listed companies shall disclose to the market any fact or information which has, or may have, influence or effect on the development of the company's business, in its financial statements, in its securities or in the offer of such securities. No disclosure shall be made if three quarters of the directors approve to report such facts or information to the regulator on a confidential basis, in consideration that their disclosure may prejudice the company's interest.</i></p> <p><u>Bidder</u></p> <p><i>In takeover, Bidder shall disclose to the public its intention to acquire control of the Target company.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>Boards' decision should be motivated to cover the items listed under paragraph 3.1 (strong recommendation).</p> <p>In transactions with related parties, the board meeting minutes of the meetings in which such transaction is approved shall state the deliberations among the board members to approve the transaction in the specific terms and conditions it was approved. Such minutes will be made available to the shareholders in the next shareholders meeting.</p>

Topic / Board's role	Chile
	<p><u>Target</u></p> <p><i>When the Target of a takeover is a listed company, each director, individually, shall issue a report and state his/her substantiated opinion regarding the takeover bid and disclose any eventual interest that they may have in it. If the majority of the directors are involved in the transaction, it shall be approved by the unanimity of the rest of the directors or by shareholders holding at least two thirds of the issued shares.</i></p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p>The Board should be closely involved and make sure to</p> <ul style="list-style-type: none"> • Receive regular information (setting up of a watch program) in order to better understand the activists' strategy, their nuisance level and their requests; • Watch the market/shareholders reactions; • Analyze the activists' request against the company's corporate interest and the consistency of the company pre-defined strategy; • Review the level of leeway for finding a balanced compromise; • Take control of the communication without allowing the activists to drive it.
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>Bidder and Target boards should review and mutually approve the press releases. It is common to insert a provision in this sense in the documents that are signed as part of the negotiation (i.e. MOU, Letter of intent, etc.)</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p>Not applicable according to Chilean Law.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure integration plans are implemented.</p>

CHINA

Yalan Lei - Yun Zhou - Ting Gao - Qingjing Zhu

Zhong Lun

In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those are mandatory appear in **bold** below). However, soft law is developing rapidly and more recommendations are being put forward to entice boards to take a more proactive role when facing strategic transactions.

Developments *in italics* refer to listed companies only.

Topic / Board's role	China
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Generally speaking, the board of directors of a target company may not be aware of a potential strategic transaction before a bidder proactively contacts its senior management or directors.</p> <p><i>However, in some cases, there may be rumours in the market regarding the potential strategic transaction. In the event that a target company is a listed company⁴⁵, directors are usually required to investigate internally the authenticity of such market rumour and publish clarification announcement if necessary. Please refer to section 2.3 for further details.</i></p> <p><u>Bidder</u></p> <p>Under PRC laws and regulations⁴⁶, any decision regarding the overall strategic investment plan of a company, and in particular, strategic plans involving the merger and acquisition of the company, is within the authority of the shareholder's meeting of the company. On the other hand, the board of directors of the company is usually given the authority to decide more detailed proposals in respect of specific investment projects.</p> <p><i>For a listed company, it is a best practice to establish a special committee for strategies under the board of directors. Such special committee for strategies, whose duties include making analysis and suggestions on the overall strategic plan of the listed company, will also review whether any specific deal matches the overall strategy of the listed company. Usually, such committee will analyze not only the project feasibility, basic information of a target company, but also available options of transactional structure and key risk factors of specific major investment decisions of the listed company and make suggestions to the board of directors of the listed company.</i></p>

⁴⁵ For the sole purpose of this summary, a listed company refers to a PRC company which has publicly-listed on the Shanghai Stock Exchange or the Shenzhen Stock Exchange.

⁴⁶ For the sole purpose of this summary, PRC refers to People's Republic of China, excluding Hong Kong SAR, Macau SAR and Taiwan Province.

Topic / Board's role	China
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p><i>For a listed company, the members on its board of directors are insiders in respect of strategic transactions, such as merger and acquisition and other securities trading activities under PRC laws and regulations. Insiders are subject to strict obligations of confidentiality.</i></p> <p><i>Insiders are prohibited from trading the relevant securities, disclose the relevant inside information or suggest other people trade in such securities prior to the publication of the relevant inside information. The insiders could be subject to administrative penalties as well as criminal sanctions if violate such rules.</i></p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <ul style="list-style-type: none"> (a) Establish special committees for strategies and auditing etc. under the board of directors of a company (b) Ensure that detailed internal rules on information disclosure, connected transactions, conflict of interests etc. are in place and are duly executed by the company; (c) Maintain effective communications with the senior management team of the company and coordinate with them in the event of strategic transactions; (d) Watch the market and shareholder's reaction; (e) Engage in communications with institutional investors (if necessary) to avoid surprise shareholder activism well in advance of any coming shareholders' meeting to decide on strategic transactions; (f) Keep careful recording of the deliberations over strategic transactions during the board meetings; (g) Engage independent professional advisors timely, e.g. financial advisors, legal advisors etc., to assist with the evaluation and deliberation over strategic transactions.
1.4 Need for Special committee(s)?	<p><u>Bidder and Target</u></p> <p>Under PRC laws and regulations, it is not compulsory for companies, no matter private or publicly-listed in the event of a strategic transaction, to establish an ad hoc special committee which is equivalent to that usually required in common law countries and is composed of disinterested directors in the context of going private transaction or management leverage buyout.</p> <p>However, pursuant to PRC laws and regulations, any director who</p>

Topic / Board's role	China
	<p>has conflict of interest with a strategic transaction is prohibited from exercising voting rights concerning the relevant board resolution. The meeting of the board of directors may be held with the presence of more than half of all the disinterested directors. A resolution made at such meeting of the board of directors shall be passed by more than half of all the disinterested directors. If the number of disinterested directors present is less than three, the matter shall be submitted to the shareholders' meeting for deliberation.</p> <p>That being said, there have also been a number of recent China-based M&A transactions (often involving China-based companies incorporated or listed in the United States) utilizing a special committee process to address conflicts of interest at the board level.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p>Generally speaking, the board of directors of a company should be relatively uninvolved with insignificant transactions and increasingly involved as transactions become more significant. Therefore, in a major strategic transaction, the board of directors of the company may get involved proactively.</p> <p><i>That being said, since most of the listed companies in China usually have a controlling shareholder, being either the government or the founders and their families, a bidder is more likely to directly approach the controlling shareholders of a target company to reach a negotiated agreement. Under such circumstances, the negotiated agreement usually grants an exclusivity clause to the effect that the controlling shareholder(s) will not solicit any other potential buyer than the bidder for an agreed period.</i></p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p><i>For listed companies, board members as well as senior officers are insiders in respect of strategic transactions, such as merger and acquisition and other securities trading activities according to the relevant PRC securities laws and regulations. Insiders are subject to strict obligations of confidentiality.</i></p> <p><i>Insiders are prohibited from trading the relevant securities, disclose the relevant inside information or suggest other people trade in such securities prior to the publication of the relevant inside information. The insiders could be subject to administrative penalties as well as criminal sanctions if violate such rules.</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p><i>Listed companies are required by the relevant stock exchanges to</i></p>

Topic / Board's role	China
	<p><i>disclose information regarding strategic transactions by means of ad hoc announcement, whichever first, arises: (1) when its board of directors or board of supervisors reaches a resolution on the strategic transaction; (2) when the relevant parties have entered into letter of intent regarding the strategic transaction; or (3) a director, supervisor or senior officer becomes aware of or should have been aware of the strategic transaction.</i></p> <p><i>However, if there is a leakage or rumour in the press regarding the potential strategic transaction while the transaction is still in the preliminary planning stage and before a company is required to disclose the relevant information as mentioned above, a company is required to disclose the relevant information of the latest status of the strategic transaction by means of ad hoc announcement as well and shall disclose the progress of the transaction on an on-going basis.</i></p>
2.4 Prevention of insider dealing	
<ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><i>For listed companies, board members are insiders in respect of strategic transactions, such as merger and acquisition and other securities trading activities according to the relevant PRC securities laws and regulations.</i></p> <p><i>Furthermore, other individuals, such as shareholders, supervisors, senior managers, staff of professional advisors involved in a strategic transaction as well as the individual with access to the relevant inside information by virtue of their positions in a company, all could be regarded as insiders.</i></p> <p><i>Insiders are prohibited from trading the relevant securities, disclose the relevant inside information or suggest other people trade in such securities prior to the publication of the relevant inside information. The insiders could be subject to administrative penalties as well as criminal sanctions if violate such rules.</i></p>
3. Review of the terms of the transaction 3.1 Principle and scope of review	<p><u>Target</u></p> <p><i>For a listed company, in the context of a tender offer, the board of directors of a target company shall conduct investigation into the subject qualification, credit, and intention of acquisition of the purchaser, analyze the tender offer conditions, and make suggestions to the shareholders on whether or not to accept the tender offer.</i></p> <p><u>Bidder</u></p> <p><i>In practice, the board of directors of a bidder will usually engage legal advisor, financial advisor as well as other professional</i></p>

Topic / Board's role	China
	advisors (e.g., advisor on environmental protection and work safety) to carry out due diligence of a target company. The board of directors of the bidder shall review the key issues identified from such due diligence exercises, e.g. outstanding labor disputes, expiration of key IPR and license etc. The board of directors of the bidder shall ensure that relevant risks are adequately covered by various terms in the transaction documents.
3.2 Appointment of an ad hoc committee	<p><u>Bidder and Target</u></p> <p>Under PRC laws and regulations, it is not compulsory for companies, no matter private or publicly-listed, to appoint ad hoc committees in the event of a strategic transaction.</p> <p><i>That being said, for a listed company, it is a best practice for to establish special committees for strategies, auditing, nomination, remuneration and assessment, etc. Members of the special committees shall be composed of directors, and the independent directors shall constitute the majority in nomination committee, remuneration and assessment committee, and those committees shall be chaired by independent directors. The auditing committee shall have at least one independent director that is a professional accountant.</i></p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>It is a best practice for listed companies and medium and large-scale private companies to establish an audit committee under their board of directors. Generally speaking, the audit committee shall be responsible for reviewing a company's internal control, supervising the effectiveness of internal control and the self-evaluation of the internal control work of the company, and coordinating the internal control audit and other related matters.</p>
3.4 Employee representatives (if any on the board) <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	<p><u>Bidder and Target</u></p> <p>There is no PRC law and regulation which provides that the presence of director can be limited based on the reason that such director is an employee representative. One of the reasons could be that the employee representative usually sits on the supervisory board of a company in the PRC.</p> <p>That being said, pursuant to PRC laws and regulations, if a strategic transaction involves restructuring or any major issues concerning the business operations of a company, a company must seek the opinions of its labor union and its employees. This concept of employee's rights is, however, not well developed either in law or in practice in the context of a strategic transaction.</p> <p>If an employee representative sits on the board, he or she is considered as insiders and are subject to a strict obligation of confidentiality.</p>

Topic / Board's role	China
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and Target</u></p> <p><i>Pursuant to PRC laws and regulations, a bidder is required to engage a qualified financial institution in the PRC if it intends to acquire shares in a listed company in the PRC.</i></p> <p><i>In the context of a tender offer, the board of a target company is also required to engage independent financial advisor.</i></p> <p><i>The financial advisor of a bidder shall issue its opinion on the bidder's ability and source of funds for paying the acquisition price, the purpose of the offer, whether the particulars included in the tender offer report are true, accurate and complete etc.</i></p> <p><i>The financial advisor of a target company shall opine on the bidder's eligibility and economic strength in making the offer; the potential impact of the takeover on the Target's operational independence and sustainable development; the fairness and reasonableness of the offer price etc. and provide a recommendation to the public shareholders on whether to accept the offer or not.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p>Please refer to section 1.1 and section 3.1 for more details.</p> <p><i>For a listed company, in the context of a tender offer, the board of directors of a target company shall, within 20 days after a bidder announces the tender offer report, make a public announcement of the report of the board of directors, which states whether the board recommends that shareholders of the target company accept the offer, with its reasoning.</i></p> <p><i>In terms of some types of strategic transaction, especially those regarded as material connected transactions, the independent directors of a listed company should also issue their independent opinions regarding such strategic transaction.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p><u>Vis-à-vis board members:</u></p> <p>PRC laws and regulations imposes civil (tort), administrative and criminal liability on directors, for breaching their duties of loyalty to the company and for violating other legislation. In particular, if a director who is affiliated with the counterparty in a strategic transaction prejudices the interests of the company, such senior management shall be liable for compensation if he/she causes any loss to the company therefrom. Please refer to paragraph 1.4 for more details.</p>

Topic / Board's role	China
	<p><u>Vis-à-vis executives:</u></p> <p>PRC laws and regulations also imposes civil (tort), administrative and criminal liability on senior management, for breaching their duties of loyalty to the company and for violating other legislation. In particular, if a member from the senior management who is affiliated with the counterparty in a strategic transaction prejudices the interests of the company, he/she shall be liable for compensation if he/she causes any loss to the company therefrom.</p>
4.3 Publicity	<p><u>Bidder and Target</u></p> <p><i>Under PRC laws and regulations, a listed company must establish and implement rules for management of information disclosure. The board of directors of the listed company is responsible for the establishment of such rules and must annually evaluate the implementation of such rules and rectify such rules, if required. In addition, the directors of the listed company shall also keep track of the listed company's operations, financial status, major events which have occurred or may possibly occur, and the directors should also take initiatives to check and obtain the information necessary in deciding whether to disclose. Please refer to section 2.3 for further details.</i></p>
4.4 Merits	Please refer to section 3.1 for further details.
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p>Generally speaking, shareholder activism is not a matter of concern in for most of listed companies in China⁴⁷.</p> <p>That being said, the board of directors of a company is advised to</p> <ul style="list-style-type: none"> (a) establish and maintain effective communication channels with shareholders, especially when a shareholders' meeting is coming to decide on a strategic transactional plan of the company so as to avoid surprise sabotage from dissenting shareholders; (b) analyze the requests/concerns raised by dissenting shareholders and seek a balanced compromise; (c) watch institutional shareholders' behavior on the market; and (d) keep written records regarding the deliberation of strategic

⁴⁷ Most of listed companies usually have a controlling shareholder, being either the government or the founders and their families. Institutional shareholders thus usually remain as minority shareholders of listed companies in the PRC. However, since in the event that a strategic transaction involving merger and acquisition of a listed company, such transaction shall be approved for more than two thirds of its shareholders, and institutional shareholders can use its other rights as minority shareholders of the listed company to call for special shareholders' meeting, bring derivate lawsuits etc., the listed company may still be subject to shareholder activism under certain circumstances.

Topic / Board's role	China
	transaction during the board meeting in case dissenting shareholders may challenge the decision of the board of directors.
6. Communication 6.1 Communication Plan	<p><u>Bidder and Target</u></p> <p><i>For a listed company, the secretary of the board of directors is responsible for communication with investors. Besides making periodic, interim and ad hoc announcements as required by the relevant stock exchanges, a listed company may designate dedicated staff to answer queries from investors during normal business hours. However, the selective or unequal disclosure is forbidden by PRC laws and regulations. Neither shall a listed company provide undisclosed information to any investors.</i></p>
7. Duties post transaction 7.1 Vis-à-vis employees	<p><u>Bidder and Target</u></p> <p>Ensure that arrangement vis-à-vis employees as agreed by a bidder and a target company are duly performed and executed, e.g., retaining of key employees, separation with employees (if any) etc.</p>
7.2 Vis-à-vis company	<p><u>Bidder and Target</u></p> <p>Ensure that any integration plans, transitional service plan etc. (if any) are duly performed and executed.</p>

DENMARK

Finn J. Lernø

Plesner

Topic / Board's role	Denmark
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>It is necessary to distinguish between situations where a company (or its owner(s)) actively pursues to solicit offers for the company and situations where a company suddenly is Target of an unsolicited offer.</p> <p>In the first situation, the Board should be involved from the outset.</p> <p>If the Board of the Target obtains information regarding a potential transaction involving the Target (either directly through an approach from the Bidder or from other sources), the Target Board will often appoint legal and financial advisors, allowing for a preliminary assessment of potential bids or approaches to be made as soon as possible. Depending on the nature of the approach (including its seriousness and/or attractiveness), the Board may elect to inform its shareholders, it being understood that opting out of sharing information with the key shareholders could increase the risk of potential managerial liability. <i>Listed Target companies, may only provide information to its shareholders in accordance with applicable securities laws, in particular rules regarding dissemination of inside information under the Market Abuse Regulation. Further, in the event of takeover offers presented to the Target, the Board will, upon request from the Bidder, be required to present such offers to the shareholders and make a statement evaluating its attractiveness.</i></p> <p>Once it has been established that the potential approach is serious or that the transaction may materialize, the Board should (i) decide a strategy for replying to the potential offeror, (ii) seek to solicit additional competing offers (directly or through financial advisors), and/or (iii) initiate a strategic review of the Target business, to ensure that the potential value of the Target is identified and released. <i>Listed target companies are under the Danish Corporate Governance code (soft law) recommended to prepare a defense manual in case the company becomes subject to a takeover. Such manual could include specific sections on leak and communication strategies, information delay statements, working group lists, lines of communication, etc.</i></p> <p><i>The board of the Target must inform Nasdaq Copenhagen's surveillance team as soon as possible to allow for surveillance of any potential violations of the market abuse regime.</i></p>

Topic / Board's role	Denmark
	<p><u>Bidder</u></p> <p>Decisions concerning acquisitions of other companies is usually within the authority of the Board and typically discussed and approved by the board, at least at the preliminary stage (prior to making the first contact) and at the final stage (before signing definitive agreements).</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>All members of the board are subject to the general confidentiality obligation.</p> <p>Confidential information may, as a general rule, only be passed on if it is in the best interest of the company.</p> <p><i>For listed companies applicable securities laws limits the ability to pass on confidentially information even further. Special care should be exerted for the employee elected board members, as such members may have an interest in sharing information with unions or other employee organizations.</i></p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>Various measures can be put in place:</p> <p>Specific board procedures should be considered, including meeting schedules and participation, target/bidder communication strategy, responsibility for advisors, review of potential executive management conflicts of interest and bonus agreement, relationship to and communication with employees and other stakeholders.</p> <p>In some instances, specific sub-committees or ad-hoc committees may be set up, enabling the Board additional flexibility and meeting frequency compared to a full board meeting, although Danish practice for doing so is relatively limited and typically only relevant for larger listed companies.</p> <p><i>A formal walkthrough of the internal rules (in particular to manage the insider trading issues, conflict of interests and the confidentiality issues) to ensure compliance in the context of the transaction may be relevant.</i></p> <p><i>A defense manual may include specific sections on leak and communication strategies, information delay statements, working group lists, lines of communication, etc.</i></p> <p>Generally, it is recommended to prepare detailed minutes of board minutes to reflect that they Board has complied with its fiduciary duties.</p>

Topic / Board's role	Denmark
	<p>Further, the board may, depending on the sentiment towards the potential transaction (potentially taking into account the views of major shareholders), appoint advisors and assemble a data room and potentially commission a vendor due diligence to identify any potential issues.</p>
<p>1.4 Need for Special committee(s)?</p>	<p>If several of the board members are conflicted, it may be advisable to set up a committee of independent board members in the case of a potential transaction that involves a major or controlling shareholder.</p> <p><i>For listed companies being the target of a takeover or commencing a transaction, a special takeover or transaction committee is sometimes set up in charge of preparing the preliminary steps of the transaction, communication with advisors and external experts, and facilitating the conduct of business by the board.</i></p> <p>Whether ad hoc committees will be set up, should the company pursue a transaction, depends on the extent of the transaction.</p> <p>However, given the nature of the two-tiered Danish governance structure with substantial involvement from the members of the Board, the use of ad hoc committees are somewhat limited in Denmark.</p>
<p>2. Preliminary contacts at top management level</p>	
<p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder and Target</u></p> <p>Typically, inquiries with the Target are handled with the major shareholders or through the Board.</p> <p><i>With respect to listed companies, contact is typically handled through the Chairman of the Board and deviations from this practice (in respect of the Target) may be considered hostile.</i></p> <p>The involvement of the Board will typically depend on the size of the transaction. In smaller transactions, the CEO or CFO may handle a substantial part of the contact and negotiations, whereas in larger transactions, the board and in particular the Chairman may be more heavily involved.</p> <p>In terms of the day-to-day handling of transactions, the management will typically play a large role.</p> <p><i>In takeover situations relating to listed companies, the board will play a substantial role, due to the obligation to assess the offer and provide such assessment to the shareholders.</i></p>
<p>2.2 Is there a duty to ensure</p>	<p>Yes, board members are subject to a general confidentiality</p>

Topic / Board's role	Denmark
protection of confidential data?	obligation. <i>In addition, board members of listed companies are subject to market abuse regulation, including rules on dissemination of inside information.</i>
2.3 What to do in case of leakage or rumours in the press?	<p>For non-listed companies, no applicable obligations exist, but in the event of substantial media interest or potential disruption of the business operations or partner relationships, it could be prudent to issue a press release, talk to the press or inform employees to mitigate such effects.</p> <p><i>Generally, this is especially important for listed companies where the disclosure of inside information has been delayed, as the company has a duty to disclose the inside information if confidentiality no longer can be ensured or such delay may mislead the market. The same applies where sufficiently accurate rumours are circulating in the press or public and these rumours are related to inside information the disclosure of which has been delayed.</i></p> <p><i>Typically, the disclosure of inside information is a matter for the management. However, for disclosures in the context of a potential strategic decision the board will often be involved.</i></p>
2.4 Prevention of insider dealing	<p><i>In the event of a potential transaction involving a listed company, the Board will become insiders and prohibited from trading, subject to certain exemptions but disregarding whether such trades would otherwise have been permitted (i.e., in an open trading window).</i></p> <p><i>Generally, the Target and Bidder Board should reiterate the market abuse restrictions and any trading should be approved specifically by the Chairman, following receipt of legal advice.</i></p>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p><i>In respect of other persons receiving inside information, the Board must ensure that such recipients is informed of the confidential nature of the information, the consequences of acting on such information and if relevant, seek confidentiality undertakings and ensure that such recipient is put on the insider list.</i></p>
3. 3.1 Review of the terms of the transaction	<p><u>Target</u></p> <p>The Board should assess the financial and strategic aspect of the proposal from the Bidder. Further, the Board members are obliged to take into account the interest of other stakeholders, including the employees.</p> <p>Further, and potentially with the assistance from advisors, the Board should assess all relevant terms of the proposal, including price, tax consequences, representations and warranties, indemnities, disclosure principles, deal certainty, competition law aspects, separation issues, etc.</p>
3.2 Appointment of an ad hoc	This is advisable in some circumstances (e.g., the board may be too

Topic / Board's role	Denmark
committee	<p>large to meet frequently or as required in connection with a project or transaction), but will of course depend on size and nature of the company.</p> <p><i>In the cases of conflicts of interest (see paragraph 4.2), the conflicted board members must not participate in the board's conduct of business in connection with the specific special task or issue. To ensure this and to avoid future challenges to the board's decision, it may be advisable to set up an ad hoc committee consisting of non-conflicted board members.</i></p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p>The audit committee considers the uncertainties and risks associated with the transaction and the impact the transaction may have on the overall risk and accounts of the company.</p> <p>The audit committee may participate in the assessment of the valuation of the target and the findings in the financial due diligence.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p>Large and mid-sized businesses are required to have employee representatives on the board, unless the employees choose not to pursue this opportunity. Board members must be treated equally, thus it is not possible to limit employee representatives' presence on the board.</p> <p>Before a final decision is made on the transfer of assets or shares, there may - depending on the circumstances - be an obligation to involve the work council in the decision-making process, pursuant to the Danish Act on Informing and Consulting Employees or applicable collective bargaining agreements. The Danish Act on Informing and Consulting Employees applies to undertakings employing a staff of at least 35 employees. If the number of staff is below 35, the undertaking has no duty to inform and consult pursuant to the Danish Act on Informing and Consulting Employees.</p> <p>When assessing whether there is an obligation to involve the employees in the decision-making process with respect to the transfer of an undertaking, it is important to distinguish between a transfer of activities and a transfer of shares as the duty to inform and consult the employees will often be different in these two situations. In the event of a transfer of activities, the transferor must, in reasonable time before making the final decision to carry through the transfer, inform and consult the work council with regard to the contemplated transfer. In case of a transfer of shares, it is typically not required to inform and consult the work council. However, there will be a duty to inform and consult if it is already obvious prior to the transfer that the transferee intends to introduce measures requiring that the employees are informed and consulted pursuant to the Danish Act on Informing and Consulting Employees - such measures could, for instance, be collective redundancies or a subsequent merger. In that case, the duty to</p>

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	inform and consult the employees lies with the Target company, and the informing and consulting process must take place prior to the final decision on carrying through the sale of shares. <i>In case of a takeover offer, both the Bidder and the Target will be required to inform their employees as soon as practically possible after the offer has been announced.</i>
<ul style="list-style-type: none"> How to ensure confidentiality? 	As all directors must be treated equally and have the same responsibilities, employee representatives are required to comply with the confidentiality obligations as shareholder elected board members.
3.5 Independent expert <ul style="list-style-type: none"> Ad hoc committee Role 	<u>Target</u> <p>Under Danish law, there are no obligations to appoint independent experts. In larger transactions, it is, however, customary that the Target Board appoints a financial advisor and in connection with listed companies that such financial advisor provide a fairness opinion regarding the price offered by the bidder. <i>There is no obligation to have a fairness opinion prepared in connection with offers on listed companies, but it is seen in most transactions that the Board will base their evaluation of the offer in its statement on a fairness opinion.</i></p>
4. Board's decision	<u>Bidder and/or Target</u>
4.1 Approval of opinion on the transaction	<p>Under Danish law, the level of approval required for a specific transaction will depend on the structure and size of the transaction. If the transaction concerns shares in the Target, the holders of such shares will need to accept the offer (subject to shareholders' agreements and the company's articles of association). In contrast, if the transaction concerns assets and/or subsidiaries of the Targets, the transaction can generally be approved by the Target board (and in case of very minor transactions, the executive management), however, in the event that the transaction concerns all or a substantial part of the Target's assets, the Target board would typically seek shareholder approval to limit potential managerial liability.</p> <p><i>If a listed company is subject to a takeover bid, the Target board is obliged to provide a statement of the board's evaluation of the offer and its consequences for the company's interests, employment and business premises.</i></p>
4.2 On conflicts of interests <ul style="list-style-type: none"> Vis-à-vis board members 	<p>No member of the board may participate in the transaction of business that involves:</p> <p>(a) Agreements between the company and the member,</p> <p>(b) legal proceedings against the member, or</p>

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	(c) agreements between the company and a third party, or legal proceedings against a third party, if the member has a material interest in the business that may conflict with the interest of the company.
<ul style="list-style-type: none"> • Vis-à-vis executives 	The same applies for the management.
4.3 Publicity	<i>The Board shall make sure that the appropriate measures are prepared in case of a leakage. A plan for public disclosure and communication should also be prepared.</i>
4.4 Merits	The Board should form a view on the transaction and inform the shareholders thereof (<i>mandatory in takeovers involving listed companies</i>)
5. Shareholders' activism 5.1 Board's implication	<i>Generally, in takeover transactions, the Board should be aware of the 90% squeeze-out threshold.</i> <i>If it has been identified that a hedge fund or similar shareholder activists have taken an interest in the Target, the Board should try to obtain more information regarding the stakes held by such activists, understand whether the activists are acquiring more shares, the activist strategy and understand whether communication with the activist is relevant and/or appropriate.</i>
6. Communication 6.1 Communication Plan	For non-listed companies, there are no formal legal requirements. It is, however, customary that the Target and Bidder Boards (or executive managements) review and handle any communications relating to material transactions. Lately, it has also become more normal that both Bidders and Target companies engage media consultants that specialize in M&A and corporate finance transactions to assist with the external communication. <i>For listed companies, all communications should be analyzed in compliance with applicable disclosure obligations, which typically involves the legal department as well as IR and other relevant function. In transactions with US law aspects, the IR should further ensure that any disclosures are made in accordance with the US publicity guidelines.</i>
7. Duties post transaction 7.1 Vis-à-vis employees	Ensure commitments (including vis-à-vis Target employees) are complied with.
7.2 Vis-à-vis company	Ensure integration plans are implemented.

ESTONIA

Dovile Burgiene

Valiunas Elex

Topic / Board's role	Estonia
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Generally, the Target is not aware of the transaction until the Bidder contacts the Target.</p> <p><u>Public limited liability companies (<i>aktsiaselts</i>)⁴⁸ and listed companies⁴⁹</u></p> <p>Under Estonian law, the management board is active in everyday activities of the company by managing and representing the company. The supervisory board is the strategic planner of the company setting the objectives and strategy of the Company. Both supervisory and management board are obliged to act with due diligence. Furthermore, the conclusion of a transaction within the scope of everyday economic activities⁵⁰ is decided by management board. A transaction which is beyond the scope of everyday economic activities, such as strategic transactions, needs consent of supervisory board. Therefore, the management and the supervisory board must get involved in the transactions right after the bidder contacts the Target in order to fulfil their obligations with due diligence.</p> <p><u>Private limited liability companies (<i>osaiühing</i>)⁵¹</u></p> <p>If the company has two-tier management system then the regulation is the same as for the public limited liability companies and listed companies. If the company has one-tier management system, then the conclusion of a transaction is decided by the management board or by the Shareholders if the Articles of the company so stipulate. Also – the shareholders of OÜ company may always decide on any issue pertaining to the OÜ company. Therefore, the management (and the supervisory board) must get involved in the transactions right after the bidder contacts the Target.</p>

⁴⁸ Public limited liability company (*aktsiaselts*) is a company whose share capital is divided into shares and whom shareholders are not personally liable for the obligations of the company. Public limited liability companies have two-tier management system: management board (*juhatust*) and supervisory board (*nõukogu*) who both oversee and manage the activities of the company.

⁴⁹ All listed companies whose shares are traded on the NASDAQ Tallinn (Estonian stock exchange) are established in a form of public limited company. However, in some cases for listed companies, there are different rules compared to public limited liability companies whose shares are not traded on the stock exchange.

⁵⁰ Whether a transaction falls under the scope of everyday economic activities or not is decided case-by-case basis and depends largely on what fields of economy the company is active.

⁵¹ Private limited liability company (*osaiühing*) is a company whose share capital is divided into shares and whom shareholders are not personally liable for the obligations of the company. Private limited liability companies have mandatory one-tier management system: management board that oversees and manages the activities of the company. However, private limited liability companies are free to use the two-tier management system.

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	<p><u>Bidder</u></p> <p>Same regulations as stated above are applicable to the Bidder as well. Therefore, the management and supervisory board should be involved as soon as possible to manage and review a potential deal.</p>
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>Members of the management board and the supervisory board have an obligation by function of law to preserve business secrets.</p> <p><u>Listed companies</u></p> <p><i>Privileged information will create an insider dealing situation for a member of the management and the supervisory board (for further details see 2.4 below).</i></p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <p>Various measures can be put in place by the articles of association or by the internal rules of the company. However, some measures are put in place by laws.</p> <p>Under Estonian law, the management board:</p> <ul style="list-style-type: none"> • shall present an overview of the economic activities and economic situation of the company to the supervisory board at least once every four months; • shall immediately give notice of any material deterioration of the economic condition of the company or of any other material circumstances related to the economic activities of the company. <p>The members of the management and the supervisory board shall act in accordance with the principle of good faith and consider each other's legitimate interests in their mutual relations.</p> <p><u>Listed companies</u></p> <p><i>Under the soft law⁵² the management and the supervisory board shall make their best effort to collaborate in order to protect the interests of the company (such as to discuss strategic management issues with the supervisory board, to regularly notify the supervisory board about all relevant circumstances, which affect the activities of the company etc.).</i></p>

⁵² Financial Supervision Authority and NASDAQ Tallinn AS (Estonian Stock Exchange) developed a recommended practice Corporate Governance Code (*hea ühingujuhtimise tava*), in force since 2006. These recommendations are aimed at those companies whose securities are admitted to trading on regulated market. However, any company may follow those recommendations. The Corporate Governance Code specifies and complements the general duties of companies stipulated in the Commercial Code.

Topic / Board's role	Estonia
1.4 Need for Special committee?	The law does not require to establish special committees and there is no such standard practice either in Estonia.
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>As the management board represent the company in concluding transactions and it should act with the due diligence of a diligent entrepreneur, the management board of the Bidder should get proactively involved in the whole transaction process.</p> <p>As the supervisory board shall give its consent to the conclusion of the transaction and it must act with due diligence, the supervisory board should review the transaction process and should be involved in strategic issues. No pro-active involvement is required – it should rather act upon the request of the management board.</p> <p>The level of involvement of the management and supervisory board is also dependent on the obligation listed in paragraph 3 below.</p> <p><u>Target</u></p> <p>As the management board represent the company in concluding transactions and the supervisory board shall give its consent to the conclusion of the transaction and they should act with due diligence, the management and supervisory board of the Target will be proactively involved in the whole transaction process.</p> <p>Especially, if the Bidder wishes:</p> <ul style="list-style-type: none"> • to conduct the due diligence and the valuation of the Target; • to ensure the exclusivity of the negotiations; • to seek exclusivity undertakings from the Target company.
2.2 Is there a duty to ensure protection of confidential data?	<p><u>Bidder and Target</u></p> <p>Members of the management and the supervisory board have an obligation to preserve business secrets and confidentiality in general.</p> <p><u>Listed companies</u></p> <p><i>The company is required</i></p> <ul style="list-style-type: none"> • <i>to maintain the confidentiality of inside information and monitor access thereto;</i>

Topic / Board's role	Estonia
	<ul style="list-style-type: none"> <i>to organise the prohibition on access to inside information to persons who do not need the inside information for the performance of their functions at the company;</i> <i>to ensure that persons who have access to inside information are aware of their obligations in relation to the inside information and of the sanctions applicable upon misuse of the inside information.</i> <p><i>The company shall establish internal rules to regulate the maintenance of the confidentiality and disclosure of inside information.</i></p> <p><i>Privileged information will create an insider dealing situation for a member of the management and the supervisory board (for further details see 2.4 below).</i></p> <p><i>Under the soft law, the management and the supervisory board shall follow in managing the mutual exchange of data the confidentiality requirements, which ensure control over the flow of the price-sensitive information.</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>The management board shall ensure that an appropriate plan is in place in case of leakage or rumours in the press.</p> <p><u>Listed companies</u></p> <p><i>If a person acting for the account or on behalf of the company, discloses inside information to a third party in connection with the work, profession or duties thereof, the person shall disclose the corresponding information to the full extent at the same time with the disclosure to the third party, if such disclosure is intentional, or immediately after disclosure of the information to the third party, if such disclosure is unintentional.</i></p> <p><i>There is no obligation to disclose the information if the third party who received inside information has the obligation to maintain the confidentiality of the information.</i></p> <p><i>Under the soft law, the company shall thoughtfully and with due diligence arrange the exchange of the information between the press and analysts.</i></p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p> <p><u>Listed companies</u></p> <p><i>The company shall establish internal rules to regulate the</i></p>

Topic / Board's role	Estonia
	<i>maintenance of the confidentiality and disclosure of inside information (for further information see 2.2 above).</i>
<ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<i>Members of the management and supervisory board are insiders by law. They must be recorded on an insider list.</i>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<i>Other individuals who are in possession of inside information due to their work, professions or duties are also insiders by law. They must be recorded on an insider list.</i>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p><u>Public limited liability companies and listed companies</u></p> <p>Under the Estonian law, the supervisory board plans the activities of the company and organises the management of the company. This mainly includes setting up overall objectives and strategy of the company and making important decisions for the company. The supervisory board shall perform these duties with due diligence. Therefore, the supervisory board should review only the strategic aspects of the proposed deal and make sure that the risks for the company have been properly covered in order to proceed with the transaction. It should also review the key findings of the due diligence to make sure that no unjustified risks are taken for the company.</p> <p>Under the Estonian law, the management board manages the company and ensures that the objectives of the company decided by the supervisory board are fulfilled. The management board shall perform its duties with due diligence. Therefore, the management board shall overview all the terms of the transaction, review all the aspects of the transaction, make sure that all the risks of the transaction are properly covered. The management board should also address all the findings of the due diligence. The management board members shall ultimately be liable for any damage resulting from the transaction and they can be released from the liability only if they manage to prove that they acted within the due diligence of a diligent entrepreneur.</p> <p><u>Private limited liability company</u></p> <p>If the private limited liability company has a one-tier management system, then the obligations of the supervisory board are managed by the management board, unless otherwise agreed in the articles of association, which can stipulate that the role of the supervisory board is largely assumed by the shareholders.</p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and/or Target</u></p> <p>The law does not require such committee and neither is it a common standard in Estonia to establish such committees.</p>

Topic / Board's role	Estonia
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p><u>Public limited liability and listed companies</u></p> <p>No audit committee is required by law, but according to good corporate governance rules all larger companies have established such committees</p> <p><u>Private limited liability companies</u></p> <p>No requirement by law and seldom are such committees established since by definition such companies are smaller and try to avoid unnecessary burdens on governance.</p> <p><u>Listed companies</u></p> <p><i>Audit Committees are required for listed companies.</i></p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>Generally, employee representatives are not members of the management or supervisory board and therefore do not participate in the meetings of the management or supervisory board. However, the management of the Target and the Bidder must consult with the employee representative or in his or her absence, the employees about strategic transaction:</p> <p>(a) If it results in the transfer of the enterprise to the employee representative or in his or her absence. The notification must be in good time but not later than one month before the transfer of the enterprise in writing or in a format which can be reproduced in writing.</p> <p>(b) If it results in collective termination of employment contracts. The notification should be in good time with the goal of reaching an agreement on prevention of the planned terminations or reduction of the number thereof and mitigation of the consequences of the terminations, including contribution to the seeking of employment by or re-training of the employees to be laid off.</p> <p>(c) If it results in substantial changes in the work organisation, substantial changes in the employment contract relationships of employees, changes in the structure of the employer etc.</p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>Employee representative has an obligation to maintain confidentiality of information which has become known to him or her in the course of performance of his or her duties or any information provided by the employer expressly in confidence.</p>

Topic / Board's role	Estonia
	<p><u>Listed companies</u></p> <p><i>Employee representative who is in possession of inside information due to his or her work, professions or duties are also insiders by law.</i></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>No such experts or committees are required by law and as a rule none of such institutions are usually established.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p><u>Public limited liability companies and listed companies</u></p> <p>Under Estonian law any decision regarding a transaction within the scope of everyday economic activities is decided by the management board. A transaction which is beyond the scope of everyday economic activities needs consent of the supervisory board.</p> <p><u>Private limited liability companies</u></p> <p>If the company has two-tier management system then the regulation is the same as for the public limited liability companies and listed companies. If the company has one-tier management system, then the conclusion of a transaction irrespective to the scope of the transaction is decided by the management board.</p> <p><u>Listed companies</u></p> <p><i>In case of take-over bid the supervisory board of the Target company must issue a reasoned opinion on the take-over bid.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p><u>Public limited liability companies and listed companies</u></p> <p>A member of the supervisory board should not participate in voting on the approval of the conclusion of a transaction between the company and the member or a third person is being decided if the interests of the member of the supervisory board arising from such transaction are in conflict with the interests of the company.</p> <p><u>Listed companies</u></p> <p><i>Under the soft law, members of the supervisory board shall avoid any conflict of interests. Members of the supervisory board shall notify chairman of the supervisory board and management board</i></p>

Topic / Board's role	Estonia
	<p><i>about an offer related to the economic activities of the company and made to him or her, to persons close to him or her or to other related persons. In case the conflict of interests is substantial and with the long-lasting character the member of the supervisory board shall resign or shall be removed from the supervisory board.</i></p> <p><u>Private limited liability companies</u></p> <p>If the company has two-tier management system then the regulation is the same as for the public limited liability companies and listed companies.</p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	<p><u>Public and private limited liability companies and listed companies</u></p> <p>In order to avoid the conflict of interests a member of the management board has no right to represent the company in the performance of transactions for which, pursuant to the law, the supervisory board or the shareholders must separately decide on the appointment of representatives. One of those situations is the conclusion of a transaction with the members of the management board, where the supervisory board or the shareholders decide on the conclusion and the terms and conditions of the transactions and appoint a representative of the company for the conclusion of the transactions.</p> <p><u>Listed companies</u></p> <p><i>Under the soft law, members of the management board shall avoid any conflict of interests and notify chairman of the supervisory board and other members of the management board about an offer related to the economic activities of the company and made to him or her, to persons close to him or her or to other related persons.</i></p>
4.3 Publicity	<p>The management board shall ensure that an appropriate plan for publication of the transaction is in place.</p> <p><u>Listed companies</u></p> <p><i>Under the soft law, the company shall thoughtfully and with due diligence arrange the exchange of the information between the press and analysts and the company. Strict rules are established regarding stock exchange notifications and releases.</i></p>
4.4 Merits	<p><u>Bidder and Target</u></p> <p>The management and supervisory board must make a motivated decision as they are expected to act with due diligence. The merits of the decision should cover the items listed under paragraph 3.1 above.</p>

Topic / Board's role	Estonia
5. Shareholders' activism 5.1 Board's implication	<p><u>Any listed company</u></p> <p>Shareholders can ask questions from the management board members at the shareholder meetings and the management board can only refrain from answers with reference to justified confidentiality and hurting of company's trade secrets, etc. The right of shareholders for information is widely used at the shareholders meetings.</p>
6. Communication Communication Plan	<p><u>Bidder and Target</u></p> <p>The management board of the company represents the company, therefore it must ensure that proper communication plan is implemented.</p>
7. Duties post transaction 7.1 Vis-à-vis employees	<p><u>Bidder and Target</u></p> <p>Ensure that all the commitments are complied with.</p>
7.2 Vis-à-vis company	<p><u>Bidder and Target</u></p> <p>Ensure integration plans are implemented.</p>

FRANCE

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In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those that are mandatory appear in **bold** below). However, soft law is developing rapidly and more recommendations are being put forward to entice boards to take a more proactive role when facing strategic transactions.

Developments *in italics* refer to listed companies only.

Topic / Board's role	France
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Generally, the Target is not aware of anything, except where the Bidder contacts the Management or the Chairman of the Board to test the waters upfront.</p> <p>If the Board suspects that the company could be subject to a bid, it may choose to require the implementation of a process in order to (i) monitor key vulnerability factors, <i>including valuation of the Company, evolution of market prices/movements of the Company's shares</i>, (ii) <i>understand the perception of analysts' publications</i> and (iii) maintain regular and close contact with main shareholders.</p> <p>Board may also review periodically possible measures at hand which could make part of a defence strategy and update a road map, if subject to unfriendly or aggressive manoeuvres.</p> <p>Upon receipt of an offer (binding or not) the board of the Target should be involved on the decision to enter (or not) into preliminary talks.</p> <p><u>Bidder</u></p> <p>Under French Law, any decision regarding the future strategy of the company is within the authority of the board.</p> <p>Additionally, soft law (notably through the corporate governance Code of Afep Medef⁵³) recommends that any significant transaction outside the scope of the strategy pre-defined by the</p>

⁵³ French listed corporations have developed since 1995 principles for corporate governance forming a collection of recommendations put together by working parties of the *Association Française des Entreprises Privées* (Afep) and the *Mouvement des Entreprises de France* (Medef). These recommendations have stemmed from initiatives of the business community itself, which attaches importance to defining certain principles of good operation and transparency intended to improve management practices and to respond to the expectations of investors and the public. This set of recommendations, which constitutes the Afep-Medef Code, may be designated by listed companies as their reference code pursuant to Articles L.225-37 and L.225-68 of the French Commercial Code. These recommendations are aimed at those companies whose securities are admitted to trading on a regulated market. It is also advisable and recommended that other companies apply these recommendations in whole or in part while adapting them to their own specific features.

Topic / Board's role	France
	<p>board be subject to a prior approval of the latter.</p> <p>As a result, especially for listed companies and for private companies of a certain size and with a disseminated share capital, the board should be involved as soon as possible to review a potential deal against the strategy of the company. The board should review the position on the following topics: does the deal match the goals of the company's strategy, does it comply with its corporate interest, what alternatives have been tested in order to demonstrate that the best option has been selected.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Any member of the board that has a conflict of interest should inform the chairman and refrain from attending (or voting at) relevant meetings.</p> <p><i><u>For listed companies, privileged information will create an insider dealing situation for board members (see 2.4 below).</u></i></p> <p>For listed companies and for private companies of a certain size and with a disseminated share capital, a specific sub-committee composed of independent directors is frequently put in place in order to examine the proposed transaction and follow narrowly each step of preliminary talks and take a view as to whether disclosure should occur or whether protection of legitimate interests of the Bidder justifies to post-pone disclosure (subject then to satisfaction of certain conditions – in particular ensuring adequate means and measures are in place to maintain confidentiality).</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>Various measures can be put in place:</p> <p>Drafting of internal rules (in particular to manage the conflict of interests and the confidentiality issues)</p> <p>Setting up of specific sub- committees or ad-hoc committees (composed of independent directors) able to work and meet with more flexibility and frequency than a full board (see 1.4 below).</p> <p>Drafting of an agenda and a road map (accurate planning of meetings, monitoring of the communication policy) (see also Section 6.1).</p> <p>Reflection on how to interact with the company's management (some meetings of the board could be hold without the presence of the management representatives and executive directors, others with their internal feedback).</p> <p>Careful recording of the deliberations testifying a consistent and</p>

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	orderly process review and justifying the choices made and the decisions taken).
<p>1.4 Need for Special committee(s)?</p>	<p>In certain cases (conflicts of interests), an ad hoc committee composed of independent members is necessary.</p> <p><i>For listed companies, even if there are no identified conflicts of interests, it is part of best practices to set up a special committee in charge of following closely the preliminary talks and the transaction in progress with the assistance of external experts/counsels. The role of the special committees is to prepare the decisions of the board (including through discussing with external advisers/outside experts) and to take the measures supporting a solid review process which could be explained and subsequently externalised to shareholders and the market (see Section 2.1).</i></p> <p><i>The special committee should be prepared to meet as often as necessary and to regularly report to the full board.</i></p> <p>The audit committee (in charge of the valuation issues and financial risks), and the strategic committee, if any, may also be usefully involved.</p> <p>See also Section 3.5 on role of Independent Expert.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>Board members will be involved regularly on the strategy reviews but less likely to be proactively involved during preliminary talks for confidentiality reasons.</p> <p>Highly recommended in case of strategic transactions (see 3. below).</p> <p><u>Target</u> (in case of preliminary contacts with Target's Management)</p> <p>May be difficult to avoid, if the Bidder wishes:</p> <ul style="list-style-type: none"> • <i>to have access to a data room before any firm commitment, in order to assess its own valuation of the Target and its forecasts regarding future synergies;</i> • to ensure that the Target will cooperate, in case of antitrust issues; • to seek exclusivity undertakings from the Target company;

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	<ul style="list-style-type: none"> <i>to ascertain a recommendation of the board and the assurance that the latter will not solicit third parties (for instance through a tender offer agreement/memorandum)</i>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>YES and <i>with particular strength in case of listed companies.</i></p> <p>Board members are primary insiders and are submitted to a strict obligation of confidentiality and abstention. Both Chairmen will usefully and regularly remind this requirement and draw the attention of board members on the sensitive nature of information transmitted.</p> <p>Board members also have a duty:</p> <ul style="list-style-type: none"> to review what protective measures have been put in place by management (NDA/drafting of insiders list, limitation of involved and informed persons, code names, etc.); and <i>to make sure that appropriate communication tools have been prepared (any leakage triggers a requirement to promptly disclose any sensitive information (see section 1.2 above)).</i>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>Board should make sure appropriate crisis press releases are in place.</p> <p><i>For listed companies, the board should review the communication to the market in advance.</i></p> <p><i>In case where the Target has not been previously approached (hostile tactics), the Target's board may request from the AMF that it takes appropriate measures to require the publication of a press release from companies/investors which are suspected to prepare a transaction ("put up shut up" procedure).</i></p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p>YES.</p> <p>The Chairman of the Board shall remind directors of their abstention obligations.</p> <p><i>Members of the board are by law "primary insiders" and must be recorded on an insider list.</i></p>
<ul style="list-style-type: none"> Vis-à-vis other 	<p>YES</p>

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individuals potentially involved	This is a duty for the management. <i>The board may want to ensure that appropriate measures have been put in place by the management to ensure prevention of insider dealing.</i>
3. Review of the terms of the transaction 3.1 Principle and scope of review	<p><u>Bidder and Target</u></p> <p>Board should review the financial/strategic/social aspects of the proposed deal (Target's valuation, synergies, impact on financial structure and accounts, impact on employment, impact on IP rights, execution risks, etc.).</p> <p>Should also review the main findings stemming from the due diligence to discuss with the management how the risks identified in the DD are being addressed (off balance sheet commitments, potential impact on customers, key management, retention, environmental risks, material litigations, etc.).</p> <p>Board should also ensure that:</p> <ul style="list-style-type: none"> the acquisition contract's terms adequately cover the risks identified and ensure a secured path to closing; and appropriate integration and retention plans are in place or being prepared.
3.2 Appointment of an ad hoc committee	<p><u>Bidder and/or Target</u></p> <p>Advisable (see Sections 1.3 and 1.4 above)</p> <p><i>In certain circumstances (e.g. conflicts of interests), close to being mandatory to ensure a process that is less exposed to being challenged.</i></p> <p>In case one is appointed, the committee should have its own external advisors and the corresponding budget.</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>The audit committee assesses the impact of the proposed transaction on the company's financial statements and its potential risks in terms of financial structure.</p> <p>It reviews the valuation memo and the robustness of business plans.</p> <p>In case of listed companies, the above role will be mandatory.</p>
3.4 Employee representatives (if	<u>Bidder and Target</u>

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<p>any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p>NO.</p> <p>It is worth noting that members of the Works Council do not attend special committees of the board. However, it is considered as good practice to involve the directors appointed to represent employees (if any) in these committees.</p> <p>Members of Works Council are also subject to the same confidentiality duties.</p> <p><u>Nota</u> : In France, the management of both Target and purchaser must consult with the Works Council prior to any binding agreement being signed.</p> <p><i>In case of listed Targets, the board of the Target may not issue a recommendation with respect to the public offer before the Works Council has delivered its own, and the offer cannot be opened before completion of the Works Council process.</i></p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>All directors, whatever their duties and all members of the Works Council attending the board meetings are considered as insiders and are subject to a strict obligation of confidentiality.</p> <p><i>Regarding listed companies, the communication of an inside information to a person who does not need to know it in the normal course of his/her function is a market abuse, subject to criminal and administrative sanctions.</i></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>Recommended for private transactions which affect the structure of either Bidder or Target or both, or when there is a potential conflict of interest.</p> <p>Generally, external opinion of an independent expert is a means for the board to limit its risks in terms of liabilities.</p> <p><i>If there is a potential conflict of interest, the appointment of an independent expert by the board of the Target to issue a fairness opinion is mandatory in case of a public offer (AMF Regulations).</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>For private companies, board approval will be advisable and in some cases required by the governance as organised by the company's by-laws, for any significant transactions.</p>

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	<p><i>Strongly recommended in case the transaction does not match the strategy of a public company.</i></p> <p><i>In case of a take-over bid, the Target's board must issue a reasoned opinion on the pros and cons of the bid, its consequences for the company, its shareholders and employees. The Bidder's board may issue a similar opinion. These opinions are disclosed in the public offer documentation.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>Board should review the situation that may be caused by potential or actual conflicts of interests involving top managers or executive directors of Bidder or Target (review of any existing or projected agreements involving such individuals and either company).</p> <p>Same as for directors.</p>
<p>4.3 Publicity</p>	<p><i>Bidder and Target should ensure that an appropriate plan (for internal and external communication) is in place.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>Boards' decision should be motivated to cover the items listed under paragraph 3.1 (strong recommendation).</p> <p><i>Mandatory in case of a public take over.</i></p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p><i>The Board should be closely involved and make sure to</i></p> <ul style="list-style-type: none"> • <i>Receive regular information (setting up of a watch program) in order to better understand the activists' strategy, their nuisance level and their requests;</i> • <i>Watch the market/shareholders reactions;</i> • <i>Analyse the activists' requests against the company's corporate interests and the consistency of the company pre-defined strategy;</i> • <i>Review the level of leeway for finding a balanced compromise;</i> • <i>Take control of the communication without allowing the activists to drive it.</i>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <ul style="list-style-type: none"> • Bidder and Target boards should review and approve the

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	<p>press releases, <i>with the assistance of the audit committee</i> regarding any financial issues/communication;</p> <ul style="list-style-type: none"> • <i>For listed companies, board should appoint a PR agency at the initial stage of the process.</i>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u> (if involved upfront)</p> <p>Ensure commitments (including vis-à-vis Target employees) are complied with.</p> <p><i>In case of public offer, the legal representatives of the Bidder is required to regularly report to the Target's Works Council of the completion of commitments taken at the offer time.</i></p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u> (if involved upfront)</p> <p>Ensure integration plans are implemented.</p>

GERMANY

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In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those that are mandatory appear in **bold** below). However, soft law is developing rapidly and more recommendations are being put forward to entice boards to take a more proactive role when facing strategic transactions.

Developments *in italics* refer to listed companies only.

Topic / Board's role	Germany
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Under statutory law, there is no obligation for the bidder to contact either the executive board or the supervisory board of the target company. However, in order to pave the way for a friendly takeover environment including, <i>inter alia</i>, the opportunity to perform due diligence and to be granted the general support of the target company's executive and/or supervisory bodies, a bidder would customarily contact the executive board of the target within due time in the preliminary stage of the transaction.</p> <p>In turn, the executive board and/or the supervisory board of the target company are prohibited from frustrating the transaction only after the decision to launch the takeover bid has been published by the bidder. Thus, the executive and the supervisory board may pursue within their corporate powers and observing their duties to act in the best interest of the target company and its shareholders pre-bid defensive tactics prior to such announcement of the bid.</p> <p><u>Bidder</u></p> <p>Under German law, the decision to acquire another company rests with the executive board. However, the German Corporate Governance Code suggests that any strategic decision should be made subject to the prior approval of the supervisory board.</p> <p>In practice, the decision to launch a takeover bid and any decision regarding certain important preliminary steps (e.g. to enter into a business combination agreement) is resolved by the entire executive board and is either approved by the supervisory board prior to the decision taking of the executive board or subsequent thereto.</p> <p>Therefore, depending on the size of the transaction it is necessary to include the entire executive board and the supervisory board into the transaction process as early as possible. In the event of a co-determined supervisory board, within statutory limits, it may in some instances be preferable to involve the employee</p>

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	<p>representatives at a later point in time, i.e. closer to the respective approving decisions, in order to delay the potential for leaks and to ensure the support of the shareholders' representatives first.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Any member of the executive board or the supervisory board that has a conflict of interest with regard to the transaction must inform the CEO or the chairman of the supervisory board and refrain from voting in the relevant meeting and potentially refrain from participating in discussions; otherwise such member and possibly the entire decision taking body would not be protected by the business judgment rule.</p> <p>Privileged information on the listed target/bidding company may create an insider dealing situation for board members and other individuals with access to such information (see 2.4 below).</p> <p>In practice, depending on the volume and importance of the transaction, certain members of each the executive board (usually including or at least reporting to CEO, CFO) and of the supervisory board will form a core team which will follow the transaction closely and report to the entire board from time to time.</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p><u>Supervisory board:</u></p> <ul style="list-style-type: none"> • Approval requirement for major strategic decisions may be included either in articles of association or determined by the supervisory board on its own accord (formally included in rules of procedure of the executive board and/or of the supervisory board). • Internal rules to provide procedures with regard to decision-making and conflicts of interest. <p><u>Executive board:</u></p> <ul style="list-style-type: none"> • Rules of procedure and/or board decision on horizontal delegation of competence for the transaction. • Generally, vertical delegation to legal and M&A department within the company. <p>Each the supervisory board and executive board must request sufficient information regarding the transaction and must record carefully any material presented and the deliberations taken in order to be able to prove decision-making based on adequate information within the perimeters of the business judgment rule.</p>
<p>1.4 Need for Special committee(s)?</p>	<p>There is no statutory law obligation to establish any special committee with regard to strategic transactions. As stated above under 1.2, any member of either the executive or the supervisory</p>

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	<p>board with a conflict of interest issue should be excluded from the decision-making process in order not to jeopardize the business judgment rule protection for the respective board member. A special committee can be a way to isolate conflicted board members from discussions regarding the transaction.</p> <p>However, the competent executive board member(s) will generally form a deal team which may also comprise external advisors (legal and financial) and members of the relevant departments of the company (legal, treasury, M&A, communications, etc.).</p> <p>The deal team should meet on a regular basis and report to the executive board as reasonably necessary to provide it with adequate information for its decision-making process with regard to the transaction. In particular, the deal team will keep the competent executive board member(s) informed about every (significant) step of the transaction.</p> <p>In turn, the executive board will report to the supervisory board in regular intervals on the key developments of the transaction, such reports may also be addressed to the chairman of the supervisory board solely, who will inform the entire supervisory board as he/she sees it fit.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>Depending on the importance and size of the transaction, typically some members of the executive board will always be involved proactively during the preliminary talks and the entire executive board will be kept informed of significant steps of the transaction.</p> <p>The same applies to the chairman of the supervisory board in case of an important transaction. It stays in the chairman's reasonable discretion to inform the supervisory board at large about the pending transaction.</p> <p><u>Target</u></p> <p>The executive board of the Target will generally be contacted in the early stage of the transaction in order to achieve its support of the transaction as follows:</p> <ul style="list-style-type: none"> • Seek permission to conduct due diligence on the target • Seek support of the public tender offer • Avoid takeover defense measures
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Information regarding a (potential) public takeover of a listed</p>

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	<p>target company generally constitutes inside information under the Market Abuse Regulation with regard to the shares of the target and, in case of a listed bidder, depending on the size of the transaction, with regard to the shares of the bidder. To avoid being required to disclose such inside information in line with the Market Abuse Regulation, the listed target company and/or the listed bidder company have to implement reasonable measures preventing leakage of such information. Therefore, members of the executive board and of the supervisory board who have obtained knowledge of such transaction are obliged to refrain from disclosing any inside information to persons who are not entitled to receive such information. The disclosure of inside information to individuals internally and to external advisors, in each case as part of their normal exercise of employment or profession, is permitted, provided that information is shared on a need-to-know basis, such persons are bound by NDAs or professional confidentiality obligations, and insider lists are maintained properly.</p> <p>Board members are also generally obliged vis-à-vis their respective company to keep such information confidential.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>In the event that the rumours are sufficiently precise and concrete and the (potential) transaction constitutes an inside information, the executive board of the respective listed company has to ensure an expedient ad hoc announcement.</p> <p>The executive board should have an ad-hoc release prepared at any given time during the transaction phase, so that it may expeditiously respond to any rumours.</p> <p>In the event that the rumours are not sufficiently concrete and/or the (potential) transaction has not (yet) risen to the level of constituting an inside information, the board may apply the "no comment" policy.</p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p>Members of the executive board and of the supervisory board have to be recorded in the insider list and have to abstain from trading. The CEO and the chairman of the supervisory board shall ensure that the trading limitations are observed by its members.</p>
<ul style="list-style-type: none"> Vis-à-vis other individuals potentially involved 	<p>Other individuals employed by the bidder and/or the target company who are involved in the transaction also have to be recorded in the insider list and have to abstain from trading. The executive board is responsible for monitoring that the insider lists are maintained properly. With regard to external advisors, only one contact person has to be recorded in the insider list, whereas the respective external advisor is obliged to maintain an insider list on its own with respect to any of its employees involved in the transaction.</p>

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3. Review of the terms of the transaction	
3.1 Principle and scope of review	<p><u>Target</u> Pursuant to Section 3 para. 3 of the German Takeover Act (<i>WpÜG</i>), the executive board and the supervisory board of the target company must review and consider all aspects of the transaction and its impacts on the interests of the target company's constituencies in case of a PTO.</p> <p><u>Bidder</u> In case of an acquisition of a target company, the executive board of the bidding company must review, <i>inter alia</i>, the target's valuation parameters, the synergies which may be realized, the impact of the proposed transaction on bidder's balance sheet and the financing structure. The executive board of the bidding company should also be aware of the main findings of any due diligence conducted, in particular with regard to any risks identified therein (off balance sheet commitments, potential impact on customers, key management, retention issues, environmental risks, material litigation, etc.).</p> <p>The executive board of the bidding company should also ensure that:</p> <ul style="list-style-type: none"> • the acquisition contract's terms adequately cover the risks identified and ensure a secured path to closing; and • appropriate integration and retention plans are in place or being prepared. <p>The supervisory board should be kept duly informed of the key aspects of the transaction and of due diligence findings in order to be able to render an informed judgment on the transaction.</p>
3.2 Appointment of an ad hoc committee	<p><u>Bidder and/or Target</u></p> <p>See Sections 1.3 and 1.4 above: There is no statutory law requirement to appoint an ad hoc committee.</p> <p>However, in practice the formation of a core deal team, which is also responsible for decisions on any ad hoc announcements, is advisable and constitutes general practice.</p> <p>Any member of the board with a conflict of interest must be excluded from the decision making process in order that the board's decisions shall enjoy the business judgment rule protection.</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>In case of listed companies, the German Corporate Governance Code requires the creation of an audit committee which is in particular responsible for the monitoring of the accounting process,</p>

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	<p>the effectiveness of the internal control system and the risk management system of the respective company.</p> <p>Depending on the scope of its responsibilities provided for in the articles/rules of procedure of the supervisory board, the audit committee may be competent to assess the impact of the proposed transaction on the company's financial position and its potential risks in terms of financial structure and also review any valuation memo and the robustness of any business plan. In practice, such task is frequently performed in close cooperation with external financial advisors who are part of the deal team.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>The executive board customarily does not comprise employee representatives.</p> <p>The supervisory board comprises employee representatives if the enterprise has more than 500 (one third of the supervisory board members are employee representatives) or 2,000 employees (half of the supervisory board members are employee representatives) in Germany. The presence of such employee representatives must not be restricted.</p> <p><u>Target</u></p> <p>The executive board of the target company is required to inform the works council or, if no works council is established, the employees about any takeover bid without undue delay after the Bidder's announcement. Further, the executive board has to forward the takeover bid to the works council without undue delay after its receipt. The works council is allowed to publish a statement with regard to the transaction which the executive board has to attach to its reasoned opinion rendered to the shareholders with regard to the transaction pursuant to Section 27 of the German Takeover Act (<i>WpÜG</i>).</p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>All members of the supervisory board, whether or not being employee representatives, who attend relevant board meetings are considered as insiders and are subject to a strict obligation of confidentiality.</p> <p>The communication of an inside information to a person who does not need to know it in the normal course of his/her function constitutes unlawful disclosure of inside information, and is, therefore, subject to criminal and administrative sanctions.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee 	<p><u>Bidder and/or Target</u></p> <p>Often, external financial advisors are part of the deal team and, as such, will issue expert and fairness opinions, if so required or</p>

Topic / Board's role	Germany
<ul style="list-style-type: none"> • Role 	<p>requested by the executive board and/or the supervisory board. Further, the appointment of an additional independent expert which is not part of the deal team is under certain circumstances recommended, in particular in the context of issuing a second fairness opinion.</p> <p>Generally, any external opinion of an independent expert is a means for the executive board and the supervisory board to limit their risks in terms of liabilities since such expert opinions provide the respective board with an adequate information basis for its decision.</p>
4. Board's decision	
<p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>Depending on the size of the transaction, approval by the entire executive board and the supervisory board will be required under the company's by-laws.</p> <p>In case of a take-over bid, the executive board and the supervisory board of the target company must issue a reasoned opinion on the pros and cons of the bid, its consequences for the company, its shareholders and employees pursuant to Section 27 of the German Takeover Act (<i>WpÜG</i>). The opinions are to be disclosed to the public.</p> <p>The supervisory and the executive board may each render a separate opinion or, alternatively, a joint opinion.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The executive board and the supervisory board should review the facts and circumstances that may be caused by potential or actual conflicts of interest involving top managers or members of the executive and supervisory board of the bidder or the target company.</p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	<p>Same as for executive and supervisory board members.</p>
<p>4.3 Publicity</p>	<p>Bidder and target company should ensure that an appropriate fall back position (for internal and external communication) is in place.</p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>Executive board's decision and supervisory board's decision must be in the best interest of the bidding entity or the target company, as the case may be.</p>

Topic / Board's role	Germany
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p>The executive board should be closely involved and make sure to:</p> <ul style="list-style-type: none"> ✓ Receive regular information (setting up of a watch program) in order to better understand the activists' strategy, their nuisance level and their requests; ✓ Watch the market/shareholders reactions; ✓ Analyse the activists' requests against the company's corporate interests and the consistency of the company pre-defined strategy; ✓ Review the level of leeway for finding a balanced compromise; ✓ Take control of the communication without allowing the activists to drive it.
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>The executive boards of the bidder and the target companies should review and approve the press releases, with the assistance of external advisors, if any, regarding any financial issues/communication.</p> <p>It might be advisable to include a public relations agency as part of the deal team.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Ensure commitments in particular those agreed to in a business combination agreement, (including vis-à-vis target company employees) are complied with.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Ensure integration plans are implemented.</p>

LATVIA

Dovile Burgiene

Valiunas Elex

Topic / Board's role	Latvia
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Under Latvian law, board of directors is the executive body of the company, which manages and represents the company. The board of directors (as well as the supervisory board) shall perform their duties as would an honest and careful manager and they shall be jointly liable for losses that they have caused to the company. Therefore in case of non-listed companies, it is in the interests of the board of directors to be proactively involved in the preparation of transaction. The board of the target will usually cooperate with the bidder with regard to preparing all kinds of necessary due diligence documentation as well as providing other information via management interviews, etc.</p> <p><u>Listed companies</u></p> <p><i>In case of publicly listed companies, the board of directors could get involved only after it would be informed about the possible transaction. The initial involvement of the board of directors of the target company would be drawing up a document setting out its opinion of the offer provided by the bidder.</i></p> <p><u>Bidder</u></p> <p>Under Latvian law, board of directors is the executive body of the company, which manages and represents the company. The board of directors (as well as the supervisory board) shall perform their duties as would an honest and careful manager and they shall be jointly liable for losses that they have caused to the company. Therefore in case of non-listed companies, it is in the interests of the board of directors to be proactively involved in the preparation of transaction from the beginning.</p> <p><u>Listed companies</u></p> <p><i>In case of publicly listed companies the board of directors of the bidder shall promptly notify the board of directors of the target company without delay after taking the decision or after the occurrence of the respective circumstances. The bidder shall be entitled to make the offer only after the Financial and Capital Market Commission (hereafter – the “FCMC”) has taken a decision on granting permission to make such offer.</i></p>

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<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>According to the Commercial Law, the status of a commercial secret may be assigned by a merchant for such matters of economic, technical or scientific nature and information, which is entered in writing or by other means or is not entered and complies with the following features:</p> <ul style="list-style-type: none"> (a) it is contained in the undertaking of the merchant or is directly related thereto; (b) it is not generally accessible to third parties; (c) it is of an actual or potential financial or non-financial value; (d) it is coming at the disposal of another person may cause losses to the merchant; (e) in relation to which the merchant has taken reasonable measures corresponding to a specific situation to preserve secrecy. <p>Bidder and Target has the right to request the protection of commercial secrets, as well as compensation for losses, which have been caused by the illegal disclosure, or use of the commercial secrets.</p> <p><u>Listed companies</u></p> <p><i>For listed companies, privileged information will create an insider dealing situation for board members.</i></p> <p><i>In order to ensure that the provisions for confidentiality of inside information are observed, an issuer (Target) shall:</i></p> <ul style="list-style-type: none"> (a) <i>establish effective arrangements to restrict access to inside information for persons that do not need that information for the exercise of their work functions within the issuer;</i> (b) <i>inform persons having access to the issuer's inside information about the requirements and sanctions laid down in regulatory provisions that may apply to the abuse or improper circulation of such information.</i>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>The involvement of the board of directors of non-listed companies in strategic transactions is generally not regulated, but the board of directors would be pro-actively involved in the transaction as the executive body of the company.</p>

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	<p><u>Listed companies</u></p> <p><i>In case of publicly traded companies, the involvement and main activities to be carried out by the board of directors of the bidder and the target are provided by the Law on Financial Instruments Market and Commercial Law.</i></p>
<p>1.4 Need for Special committee(s)?</p>	<p>Usually, no special committee is required and parties involved decide on transaction organization on mutually acceptable terms.</p> <p><u>Listed companies</u></p> <p><i>The audit committee (in charge of the valuation issues and financial risks) may be usefully involved.</i></p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>Board members will be involved regularly on the strategy reviews and operational issues but less likely to be proactively involved during preliminary talks for confidentiality reasons or other reasons.</p> <p><u>Target</u></p> <p>Board usually gets involved proactively by providing necessary internal information, documents and by supporting other operational matters.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Yes, board members are responsible for protection of the company's confidential data.</p> <p><u>Listed companies</u></p> <p><i>Yes, with particular strength in case of listed companies.</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>Generally, the board of directors should make sure appropriate crisis strategy (press releases) is in place.</p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><u>Bidder and Target</u></p> <p>Board members should act as honest and diligent managers and board members are liable for all losses that they have caused to the company.</p> <p><u>Listed companies</u></p> <p><i>For both – members of the board of directors and other individuals</i></p>

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	<p><i>potentially involved in transactions of the shares of publicly traded companies: The members of the board of directors of bidder and target companies are considered to be the first-level holders of inside information. A person who is a first-level holder of inside information shall be prohibited from: 1) disclosing, using or passing over to third parties inside information, except in cases when such information is disclosed or passed over when exercising work functions or fulfilling professional duties; 2) acquiring or disposing of financial instruments or commodities derivatives on its own or other person's behalf and advising or instructing another person to acquire or dispose of financial instruments or commodities derivatives on the basis of inside information.</i></p> <p><i>An issuer (Target) whose shares are traded on the regulated market in Latvia shall develop internal rules for compiling the list of holders of inside information. An issuer shall promptly submit these internal rules to the FCMC upon its request.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>The board of directors should review all aspects (financial/strategic/social) of the proposed deal. It should also review the main findings stemming from the due diligence.</p> <p><u>Listed companies</u></p> <p><i>For publicly traded companies, upon receipt of the FCMC's decision on granting permission to make an offer, the bidder shall promptly notify the target company in writing of the rules of the offer and ensure that the offer prospectus is available to the board of directors of the target company. Within five business days of the publication of an announcement of making the offer, the board of directors of the target company shall draw up a document setting out its opinion of the offer and the reasons on which it is based, the effect of implementation of the offer on the interests of the target company (their likely repercussions on employment in particular), the strategic plans of the bidder for the target company and their likely indirect effect on employment and the change of the location of the commercial company.</i></p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and/or Target</u></p> <p>See 1.4 above.</p> <p>Parties involved decide on transaction organization on mutually acceptable terms.</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p><u>Listed companies</u></p> <p><i>Generally, the audit committee has the following tasks:</i></p>

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	<p>(a) <i>monitor drawing up of the financial statements of a capital company and, where a capital company draws up consolidated annual accounts, also of the consolidated financial statements;</i></p> <p>(b) <i>monitor the effectiveness of the operation of the internal control and of the risk management systems of a capital company;</i></p> <p>(c) <i>monitor the process of the statutory audit of the annual accounts and, where a capital company prepares consolidated annual accounts, also of the consolidated annual accounts and the rectification of the deficiencies detected by the audit;</i></p> <p>(d) <i>propose an official auditor for carrying out audit services in the capital company;</i></p> <p>(e) <i>review and monitor the independence of an official auditor in the meaning of the Law on Sworn Auditors.</i></p> <p><i>In cases of any strategic transactions, the above mentioned tasks of the audit company may apply to the respective transaction.</i></p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>Employees shall exercise the defence of their social, economic and occupational rights and interests directly or indirectly through the mediation of employee representatives. Within the meaning of the Labour Law, employee representatives shall mean:</p> <p>(a) an employee trade union on behalf of which a trade union institution or an official authorised by the articles of association of the trade union acts; or</p> <p>(b) authorized employee representatives who have been elected in accordance with Labour Law.</p> <p>Board members cannot be elected as an employee representatives because board members represents the interests of the company, however board members can perform certain human resources duties by maintaining contact with employees and providing information on employer – employee related issues.</p> <p>Labour Law grants certain rights to employee representatives:</p> <p>(i) to request and receive from the employer information regarding the current economic and social situation of the company, and possible changes thereto as well as relevant information regarding the employment in the company of an employee appointed by the work placement service;</p>

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	<p>(ii) to receive information in good time and consult with the employer before the employer takes such decisions as may affect the interests of employees, in particular decisions which may substantially affect work remuneration, working conditions and employment in the company;</p> <p>(iii) to take part in the determination and improvement of work remuneration provisions, working environment, working conditions and organisation of working time, as well as in protecting the safety and health of employees;</p> <p>(iv) to enter the territory of the company, as well as to have access to workplaces;</p> <p>(v) to hold meetings of employees in the territory and premises of the company; and</p> <p>(vi) to monitor how regulatory enactments, the collective agreement and working procedure regulations are being observed in employment legal relationships.</p> <p><u>Listed companies</u></p> <p><i>In case of publicly traded companies, the board of directors of the target company shall communicate its opinion to the employees or their representatives. Where, before the publication of the opinion of the board of directors, the representatives of the employees of the target company have submitted to the executive board a separate opinion on the effects of the offer on employment, their opinion shall be appended to the opinion of the board of directors. In such perspective their presence cannot be limited.</i></p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>Employee representatives and experts who provide assistance to employee representatives have the duty not to disclose information brought to their attention that is a commercial secret of the employer. The employer has the duty to indicate in writing what information is to be regarded as a commercial secret. The duty not to disclose information applies to employee representatives and experts who provide assistance to employee representatives also after their activities have terminated.</p> <p><u>Listed companies</u></p> <p><i>Confidentiality is ensured by means of the provisions of the Law on the Financial Instruments Market which provides that persons fulfilling professional duties as an employee of the Target or on the basis of contractual or legal relationship with the issuer are considered first-level holders of inside information which are included in the list of holders of the inside information.</i></p>
3.5 Independent expert	<u>Bidder and/or Target</u>

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<ul style="list-style-type: none"> Ad hoc committee Role 	Generally, optional decision. Can be beneficiary in preventing potential conflict of interest.
4. Board's decision 4.1 Approval of opinion on the transaction	<p><u>Bidder and/or Target</u></p> <p>For private companies, board approval will be advisable as good corporate governance and in some cases required by the articles of association.</p> <p><u>Listed companies</u></p> <p><i>In case of publicly traded companies, the board of directors of the target company shall draw up a document setting out its opinion of the offer and the reasons on which it is based, the effect of implementation of the offer on the interests of the target company (their likely repercussions on employment in particular), the strategic plans of the bidder for the target company and their likely indirect effect on employment and the change of the location of the commercial company. The board of directors of the target company shall disclose its opinion in the mass media to notify a possibly large circle of persons whose interests are affected by an offer. The board of directors of the target company shall notify the market organizer of its opinion, and that market organizer shall post this information on its Internet homepage without delay or make it publicly available in another manner established by itself.</i></p>
4.2 On conflicts of interests <ul style="list-style-type: none"> Vis-à-vis board members Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>Board should review the situation that may be caused by potential or actual conflicts of interests involving members of the board of directors or other executives of Bidder or Target.</p>
4.3 Publicity	<p>Board should consider protection of confidentiality by appropriate indication or concealment of the certain sensitive data.</p> <p><u>Listed companies</u></p> <p><i>Additionally to the mandatory requirements for publicly traded companies (see 4.1), the Bidder and Target should ensure that an appropriate plan for public disclosure is prepared.</i></p>
4.4 Merits	<p><u>Bidder and Target</u></p> <p>Boards' decision should be motivated to cover the items listed under paragraph 3.1.</p>
5. Shareholders' activism 5.1 Board's implication	<p><u>Any listed company</u></p> <p><u>Listed companies</u></p>

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	<i>The Board should be actively involved in the process of any strategic transaction.</i>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>Bidder and Target boards should review and approve the press releases regarding any financial issues/communication.</p> <p><u>Listed companies</u></p> <p><i>For listed companies, it is recommended to board to appoint a PR agency at the initial stage of the process.</i></p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Ensure commitments are complied with.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Ensure all commitments are complied with.</p>

LITHUANIA

Dovile Burgiene

Valiunas Elex

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<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Generally, the board of the Target does not play a significant role in transactions regarding Target's acquisition because the Target's shareholders are the ones that are making a decision regarding the sale of the Target and its business. Negotiations are usually taking place between the shareholders of the Target and the board and/or the shareholders of the Bidder. Thus, the Target's board is generally not aware of anything, unless the Bidder is given an early access to the management in order to make preliminary assessments as regards the prospects of the transaction. The board of the Target may play a certain role in case of business sale through asset deal. In such case formal board's decision authorizing the sale would be needed as it would be considered as strategic business decision that is within the formal authority of the board (please see below). However, in Lithuania most of the business transfers are being done through share deals, where involvement of the Target's board is limited⁵⁴.</p> <p><u>Listed companies</u></p> <p><i>It is also worth mentioning that in case of takeover bid the Target's board, apart from seeking for a "white knight", is restricted from taking any defensive measures that could hinder the implementation of the takeover bid, unless such measures are pre-approved by the general meeting of shareholders. During the procedure of takeover bid the Target's board has a general duty to act in the best interests of the company as a whole and must not deny the shareholders of a possibility to decide on the merits of the takeover bid.</i></p> <p><u>Bidder</u></p> <p>Under Lithuanian law, decisions regarding strategic transactions are generally within the authority of the board (this applies to both private and public companies, including listed companies). In contrast, general manager⁵⁵ of the company is entrusted with the day to day management of the company's business. The articles of association of the company may establish that for certain types of</p>

⁵⁴ Please note that all developments related to Target's board should be read by taking into account the general role (or lack thereof) of the Target's board in strategic transactions as described in this paragraph 1.1.

⁵⁵ Under Lithuania, general manager is a one-person mandatory governing management body. All companies have to have a general manager. Having management board or supervisory board is optional. If there is no board formed in the company, then all duties and powers ascribed to the board under the law are delegated to the general manager. Therefore all developments described in this document that are applicable to the board are also *mutatis mutandis* applicable to general managers in cases where a company does not have a board.

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	<p>transactions the prior approval of the general meeting of shareholders is necessary.</p> <p>The timing of the board's involvement mostly depends on the boards actual role in the management of a particular company. For instance, in companies, where the board is strong because the ownership is not concentrated, the board may get involved very early. Meanwhile, in companies, where the board is weak because there are one or several controlling shareholders, the board may be entrusted with a smaller or even formal role in the transaction and, thus, get involved only in the final stages when a formal decision approving the transaction is needed.</p> <p><u>Listed companies</u></p> <p><i>Soft law instrument applicable to Lithuanian listed companies (namely, the Corporate Governance Code of NASDAQ OMX Vilnius⁵⁶) recommends for all listed companies to have management and supervisory boards and to ensure that significant transactions are subject to prior approval of the board and the most important decisions are also subject to prior approval of the general meetings of shareholders. Strategic transactions would most likely be regarded as the latter type of decisions.</i></p>
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>Board members have confidentiality obligation towards the company under the law. Board members that unlawfully disclose confidential information to third parties or use it to his or her personal benefit may be held liable against the company.</p> <p>Target and Bidder may employ contractual means in order to protect confidential information (obtain written non-disclosure undertakings of persons involved in the transaction, etc.).</p> <p>In order to ensure confidentiality during preliminary talks, a special committee composed mostly of independent board members may be put in place by the board in order to conduct an initial review of the transaction (see 1.4 below).</p> <p><u>Listed companies</u></p> <p><i>Confidential information creates an insider dealing situation for board members. Fines or even criminal liability may be imposed on the board member who discloses the confidential information of listed company to a person who is not supposed the get</i></p>

⁵⁶ The Corporate Governance Code of NASDAQ OMX Vilnius (the “**Corporate Governance Code**”) contains principles and standards of good corporate governance proposed for companies which securities are admitted to trading on NASDAQ OMX Vilnius. These principles and standards are primarily aimed at protecting of interests of shareholders, ensuring adequate balance and distribution of functions between corporate bodies, as well as adequate disclosure of corporate information, etc. The Corporate Governance Code was developed by a roundtable of experts (issuers, investors, auditors, entrepreneurs, public sector representatives, lawyers, etc.). The Corporate Governance Code is applicable to Lithuanian listed companies under the comply-or-explain principle, whereby companies must comply with the Code or explain why they have chosen an alternative approach.

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	<i>acquainted with such information by virtue.</i>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Target and/or Bidder</u></p> <p>The board may adopt regulations or other rules outlining the procedure of adopting decisions, managing confidentiality and conflict of interest issues. The board may also draft and follow a specific plan, agenda or a road map tailored to the needs of specific transaction.</p> <p>The board involvement may be organized through special committees (see 1.4 below).</p> <p>It is recommended for the board to carefully document all its deliberations and decisions regarding the transaction so that the board could have evidence showing that it adopted an informed and justified decision (e.g. in case of a dispute with shareholders or company's creditors).</p>
<p>1.4 Need for special committee(s)?</p>	<p><u>Target and/or Bidder</u></p> <p>Having committees within the board generally is not mandatory under Lithuanian law (see exception regards listed companies below).</p> <p>Under Lithuanian law, the board adopts decisions only as a whole (i.e. as undivided management body of the company). However, the board's work may be conducted by using various different committees. The key objective of the board's committees would be to increase efficiency of the activities of the board by ensuring that decisions are based on due consideration and to help organize its work with a view to ensuring that the decisions it takes are free of material conflicts of interest. Nevertheless, the final decision on the matter is always adopted by the board which remains fully responsible for the decisions that are within its scope of authority.</p> <p>Committees are not usually formed in the boards of Lithuanian private companies, especially small and medium-sized private companies.</p> <p><u>Listed companies</u></p> <p><i>It is mandatory to have audit committees within the board of listed companies.</i></p> <p><i>The audit committee may be usefully involved to evaluate financial side of the transaction.</i></p> <p><i>The Corporate Governance Code recommends, where applicable, to always use committees. Such committees should have a separate budget (e.g. for employing experts, advisors) and the majority of the committee should be comprised of independent board members.</i></p>

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<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Target</u></p> <p>It depends on the scope of the board's involvement as decided by the Target's shareholders. In most cases the board's role is not proactive (if any at all).</p> <p><u>Bidder</u></p> <p>Lithuanian law does not require for the board to be proactive. Usually, general manager is taking a proactive role in coordinating the transaction process on the Bidder's side, whereas the board oversees the general manager's activities.</p> <p>The board's role in the transaction mostly depends on the board's actual role in the management of a particular company. For instance, in companies, where the board is strong because the ownership is not concentrated, the board may get involved proactively. Meanwhile, in companies, where the board is weak because there are one or several controlling shareholders, the board may be entrusted with a smaller or even formal role in the transaction.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Board members have confidentiality obligation towards the company under the law.</p> <p><u>Listed companies</u></p> <p><i>The duty to ensure confidentiality is particularly strong in case of listed companies. Board members are insiders by law and are submitted to a strict obligation of confidentiality. Listed companies have to compile an insider's list and submit it to the supervisory authority. The insider's list has to be constantly updated.</i></p> <p><i>It is recommended to have internal rules and guidelines establishing the means and procedures of securing the secrecy of confidential information. It is also recommended collecting signatures from all persons recorded on an insider's list on a written statement where confidentiality obligation and potential liability for breaches thereof are outlined.</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>It is recommended for the board to have an appropriate plan in place in case of leakage or rumours in the press.</p> <p><u>Listed companies</u></p>

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	<p><i>If confidential information of a listed company is leaked to the press, the leaked information has to be disclosed and announced in accordance with the relevant Lithuanian laws regulating the securities market. The company may abstain from commenting the rumours if they have no factual basis. However, if rumours are partially true, then such part of the confidential information has to be disclosed and announced in accordance with the relevant Lithuanian laws regulating the securities market.</i></p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><u>Bidder and Target (Listed companies only)</u></p> <p><i>Board members are insiders by law and must be recorded on an insider's list.</i></p> <p><i>Other individuals who are in possession of inside information due to their work, professions or duties are also insiders by law. They must be recorded on an insider list.</i></p> <p><i>It is recommended for the board to ensure that appropriate measures are put in place in order to prevent situations of insider dealing (see 2.2 above).</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Target and/or Bidder</u></p> <p>The general rule is that the board should adopt an informed decision and in honest belief that the decision in question will benefit the company. In order for the board to meet such standard of conduct it should analyse all the available information about the transaction, evaluate the risks involved, perform cost-benefit analysis, and consider alternative courses of action. The board also has to ensure that the transaction corresponds to the long-term strategy of the company and, to the best knowledge of the board, will be beneficial to the company as a whole.</p> <p>In light of the above requirements, it is recommended for the board to review the financial and strategic aspect of the transaction. The Bidder's board should also review the main findings of the due diligence and make sure that any negative findings are properly addressed in the transaction documentation.</p> <p>The above requirements also relate to limiting the potential liability of the board members against the company itself or its creditors. It is also worth mentioning that under Lithuanian law the board is responsible for adopting strategic business decisions and may held liable even in cases where prior approval of the general meeting of shareholders was obtained (Lithuanian law acknowledges strict separation of management and control).</p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Target and/or Bidder</u></p> <p>Recommended, especially for listed companies (see 1.4 above).</p>

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<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>As mentioned above, committees are not usually formed in the boards of Lithuanian private companies, especially small and medium-sized private companies. However, if the board has an audit committee, it should assess the impact of the transaction on the company's financial statements and its potential risks in terms of financial structure.</p> <p><u>Listed companies</u></p> <p><i>It is mandatory to have audit committees within the board of listed companies.</i></p> <p><i>The audit committee may be usefully employed to assess the transaction's impact on the company's financial statements and its potential risks in terms of financial structure.</i></p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>Under Lithuanian law, it is not mandatory to have employee representatives in the board.</p> <p><u>Listed companies</u></p> <p><i>The Corporate Governance Code recommends involving the representatives of employees in decision-making process, however, it is not specified how exactly such involvement should take place.</i></p> <p>In case of a business transfer and other important strategic decisions the Target has to consult with representatives of employees regarding causes and legal, economic and social implications of such decision, as well as means to limit the possible negative effects of such decision to the employees. Duty to consult does not imply that consent of representatives of employees is needed.</p> <p><i>In case of takeover bid, the boards of the Target and Bidder have to ensure that employees or their representatives are duly informed about the takeover bid. In addition, the Target's board must issue and submit to the representatives of employees its reasoned opinion regarding the takeover bid, in particular the possible effects of the implementation of the takeover bid on the Target's interests and specifically conditions of employment, number of employees, Bidder's strategic plans for the Target and likely repercussions to the number of employees and job positions.</i></p>
<ul style="list-style-type: none"> • How to ensure confidentiality? 	<p>During mandatory consulting with representatives of employees, the confidential information may be disclosed to representatives of employees provided that they sign a written</p>

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	<p>non-disclosure undertaking. In certain cases the board may refuse to provide confidential information to representatives of employees if it can be reasonably argued that such disclosure would or could potentially harm the company's interests. Representatives of employees may challenge such refusal in court.</p> <p><i>Listed companies</i></p> <p><i>Employee representative who is in possession of inside information due to his or her work, professions or duties are also insiders by law. They must be recorded on an insider's list.</i></p> <p><i>Measures described in 2.2 above could be used in this regard as well.</i></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>Not mandatory under Lithuanian law but recommended, especially for public and listed companies and in cases where potential conflict of interest may exist.</p> <p>Generally, external opinion of an independent expert is a means for the board to limit its risks in terms of liability against the company or its creditors.</p> <p><i>Listed companies</i></p> <p><i>The Corporate Governance Code recommends ensuring that the board and/or its committees are provided with sufficient administrative and financial resources to discharge their duties, including the right to seek independent legal, accounting or any other advice on issues pertaining to the competence of the board and/or its committees.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p><i>Listed companies</i></p> <p><i>In case of takeover bid, the board has to issue its reasoned opinion on the takeover bid, in particular the possible effects of the implementation of the takeover bid on the Target's interests and specifically conditions of employment, number of employees, Bidder's strategic plans for the Target and likely repercussions to the number of employees and job positions.</i></p> <p>Please see 3.1 above.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>Board member has a duty to avoid a situation in which his or her personal interests are or may be in conflict with the</p>

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	<p>company's interests. In case such a situation does occur, a board member has to inform the board about a situation of existing or potential conflict of interest. The remaining board members have a right to remove such board member from voting on decisions creating the situation of existing or potential conflict of interest.</p> <p><u>Listed companies</u></p> <p><i>The Corporate Governance Code recommends that significant transactions which may create a situation of conflict of interest should be deemed adopted by the board only provided the majority of the independent board members voted in favour of such decision.</i></p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	Same as for board members.
<p>4.3 Publicity</p>	<p><u>Bidder and Target</u></p> <p>Target and Bidder should have an appropriate plan of communication in place.</p> <p><u>Listed companies</u></p> <p><i>Conclusion of strategic transaction may constitute a material event that, under the law, has to be disclosed and announced in accordance with the relevant Lithuanian laws regulating the securities market.</i></p> <p><i>In case of takeover bid, the Bidder has to disclose and publicly announce its intentions to submit the bid. In case of mandatory bid, it has to be done not later than within 4 days after the event triggering the obligation to submit mandatory bid, whereas in case of voluntary bid – within the same period after the Bidder decides to submit the voluntary bid.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and/or Target</u></p> <p>The board's decision should cover the items listed in 3.1 and 4.1 above.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p>Shareholders' activism is not prevalent in Lithuania since the ownership structure of listed companies is quite concentrated, thus, minority shareholders often do not have sufficient means to influence the company's decision making process (e.g. shareholders may require specific information from the board which may refuse to provide it due to confidentiality reasons). The board may address separate instances of shareholders' activism on case by case basis.</p>

Topic / Board's role	Lithuania
6. Communication	<u>Bidder and Target</u>
6.1 Communication Plan	Target and Bidder should have an appropriate plan of communication in place.
7. Duties post transaction	
7.1 Vis-à-vis employees	<u>Bidder and Target</u> No employee can be terminated solely due to the fact that the transaction took place. Usually, general manager is responsible for hiring and terminating employees. However, the right to hire or terminate certain employees may be ascribed in the articles of association of the company to the board or even the general meeting of shareholders.
7.2 Vis-à-vis company	<u>Bidder and Target</u> Ensure integration plans are implemented.

LUXEMBOURG

Guy Harles

Arendt

Topic / Board's role	Luxembourg
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Bidder</u></p> <p>Under Luxembourg practice, a company intending to launch an offer generally first contacts the main shareholders of the Target, or the management board of the Target, in the case of an agreed bid in order to start informal negotiations.</p> <p>At this stage, negotiations are not binding upon the parties and every party is free to continue or to stop the ongoing negotiations without risk of engaging his liability. However, in case of abrupt termination, the termination of the ongoing negotiations, if faulty, may give rise to damages for the other party. In this context, it should be noted that according to article 1583 of the Civil Code an agreement on the price to be paid and the object to be sold is sufficient to conclude a sale. If for instance a price is made and accepted, its acceptance becomes bidding on the offeror.</p> <p><u>Target</u></p> <p>The Target, as subject of the negotiations, should be involved upfront, even if no legal requirement exists to do so. The Bidder may not be able to collect all necessary information which he needs to decide if he wants to start negotiations on his own. In such case, the Bidder has to request access to data rooms and establish preliminary due diligence reports, which is only possible if the Target cooperates from the very beginning.</p> <p>When providing information to the Bidder, the board of the Target shall consider issues of equal treatment of all its shareholders and in the event a publicly listed company of insider information.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Members of a board of directors have a statutory duty of confidentiality. Furthermore for listed companies every board member and person involved in the transaction will be considered as an insider and is subject to a strict obligation of confidentiality until the intentions of the companies involved in the transaction or the transaction is publicly disclosed. The communication of inside information, not made in the normal course of business, may be considered insider dealing subject to criminal and administrative sanctions.</p> <p>The companies shall put special non-mandatory committees in</p>

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	<p>place, in order to ensure that a serious and overall confidentiality control is provided.</p> <p>Inside information may create an insider deal situation for board members, who are considered primary insiders and should be recorded on an insider list. The chairman of the management board shall remind the other board members of their abstention obligations.</p> <p>Investigations have to be led on management level, as well as lower levels. People who are directly involved in the transaction or people who may gather sufficient information in relation to the transaction (such as assistants) shall be informed about their confidentiality obligations.</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>The companies involved should establish clear step plans and deadlines for the execution of the every step of the transaction.</p> <p>It may be highly recommended to have a separate <i>ad hoc</i> committee composed of independent directors to organise such transaction and to draft reports for every important step of the transaction.</p> <p>The companies should fix collective communication strategies and communication channels towards internal staff and for external communication.</p> <p>Preliminary non-binding agreements should be signed in order to fix the communication procedure between the board members, executives and non-executives of the two companies.</p> <p>The board of directors of the Target may be well advised to get independent advice from an investment bank and from lawyers.</p>
<p>1.4 Need for Special committee(s)?</p>	<p><u>Bidder and Target</u></p> <p>Under Luxembourg law, it is not a requirement, but nevertheless a best practice, to appoint a special audit or management committees in order to proceed with the transaction.</p> <p>It is highly recommended to appoint such special committee where issues of conflict of interest or confidentiality exist.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>The main negotiation will be generally led by the Chairman of the board, or the Chairman of the special committee and/or the chief</p>

Topic / Board's role	Luxembourg
	<p>executive officer (<i>administrateur à la gestion journalière</i>). The end decisions will be subject to approval by the board of directors, which will also be involved to a limit in regular negotiation procedure.</p> <p><u>Target</u></p> <p>The Target will, as subject of the negotiation, be involved in the preliminary contacts. Whereas it would be possible to completely exclude the Target from any preliminary negotiation, this would be highly impractical. The shareholders themselves may not provide all necessary information about the company and the management body of the Target should be requested for cooperation purposes.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Every board member and person involved in the transaction will be subject to a strict obligation of confidentiality until the intentions of the companies involved in the transaction or the transaction are publicly disclosed, if applicable. The communication of inside information not made in the normal course of business may be considered insider dealing, subject to criminal and administrative sanctions.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>It is strongly encouraged to have a collective communication strategy and communication plan in the case of leakage or rumours in the press. The boards of the Bidder and Target shall prepare accurate press releases and provide one uniform and clear position which shall be communicated internally and externally.</p> <p>As far as listed companies are concerned, it is important to weight every single word in the public statements. Companies should seek expert advice from special PR departments.</p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p>The Chairman of the Board shall remind directors of their abstention obligations.</p> <p><i>Members of the board are by law “primary insiders” and must be recorded on an insider list.</i></p>
<ul style="list-style-type: none"> Vis-à-vis other individuals potentially involved 	<p>Other individuals, who are potentially involved in the transaction, may, under Luxembourg law, be considered insiders. The may trigger the application of criminal or/and administrative sanctions. The management board shall ensure that appropriate measures have been put in place to avoid any leaks and to guarantee that the transaction will not fail because of third parties.</p>

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<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>All economic, legal, strategic and social aspects of the envisaged acquisition (including the impact on the financial structure and the company's accounts, the impact on employment, the right valuation, the possible impact on intellectual property or real estate rights, as well as the execution risks and other aspects) shall be addressed by the board. These shall constitute priorities for the board and set the framework for their decisions.</p> <p>If a preliminary due diligence report has been drafted, the board shall review its main conclusions and address all relevant risks identified in such report. All off balance sheet commitments shall be stated and conclusions on potential impact on customers, key management, retention, environmental risks or on material litigations shall be taken.</p> <p>Such risks shall be covered during the negotiation process and terms and conditions of the acquisition shall ensure a secured path to the closing.</p> <p>The board shall ensure that the transaction has been disclosed in due time in accordance with the law on market abuse.</p> <p>The Bidder shall ensure that the offer document has been made available to the regulatory authorities in the case of a takeover bid and that the transaction does not trigger a mandatory bid, or if it does, that the Bidder has enough means to cover such a mandatory bid in accordance with the takeover law.</p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and Target</u></p> <p>Luxembourg law does not provide for any mandatory appointment of an <i>ad hoc</i> committee. In the interest of good corporate governance, it is recommended to create an <i>ad hoc</i> committee which have the financial means and independence to fulfil its purpose correctly.</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>Only listed companies are required to set up an audit committee. Such audit committee shall in principle monitor the establishment of financial information, ensure that internal control, internal audit and risk management systems are effective and efficient, monitor the control of annual and consolidated financial reports, and examine and monitor the independent auditor and audit firm independence. It shall review the proposed transaction in light of its usual duties.</p>

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<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>Public limited companies have the obligation to appoint representatives of the employees (as members of the board), if the company has more than one thousand employees for a continuous period of at least three years. In such case, the employee representatives will be directly involved in the decision making process of the company and may not be excluded from such. Any decision taken without involvement of such representatives may be considered void. They have the same rights and obligations as those directors appointed by the shareholders.</p> <p>It the company has more than one hundred fifty employees, a work council has to be appointed. Such work council has only a consultative function. The board is legally obliged to ask their opinion. The law does however not provide for any sanctions in case of failure to do so.</p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>The board members have to ensure that employees and employee representatives, as well as any other non-executives remain confidential about the ongoing transaction. This may and should be ensured by special confidential clauses in their respective labour contracts and by special and continuous informing about their obligation to remain silent.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><i>Please see above in section 3.2 Appointment of an ad hoc committee</i></p> <p>The appointment of independent experts to assist the board is highly recommended and usual in practice.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and Target</u></p> <p>The board is generally not required to approve the transaction. It is however in the interest of the company to establish an opinion prior to the transaction. Such opinion shall address the main reasons for the transaction, as well as any possible consequences of such transaction and the expected results.</p> <p>For private companies, board approval will be advisable and in some cases required by the governance as organised by the company's by-laws, for any significant transactions.</p> <p><i>Strongly recommended in case the transaction does not match the strategy of a public company.</i></p> <p>In case of a take-over bid, the Target's board must issue a reasoned opinion on the pros and cons of the bid, its consequences for the company, its shareholders and employees. The Bidder's board may</p>

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	issue a similar opinion. These opinions are disclosed in the public offer documentation.
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>The board shall implement an overall conflict check procedure to ensure that no potential conflict of interest arises during or out of the acquisition. The company shall communicate and report potential conflicts and ensure that any person, which is in a conflict of interest situation, does not take part in any decision making process.</p> <p>Same as for directors.</p>
<p>4.3 Publicity</p>	<p>Bidder and Target should ensure that an appropriate plan (for internal and external com) is in place.</p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>Board members are obliged to act in the best corporate interest of their company. They have to demonstrate a high level of integrity and their decisions shall be guided by and in the interest of the execution of the ongoing transaction.</p> <p>Boards' decision should be motivated to cover the items listed under paragraph 3.1 (strong recommendation).</p> <p>Mandatory in case of a public take over.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p>If a shareholder believes that the overall management of a company is not ensured in the right way by the current management, the shareholder may use his or her rights to attempt to gain control of the company and replace the management for the good of the shareholders. In such case, the management board shall act in an independent manner and try to analyse the situation in most objective way. The board shall analyse the reaction and comportment of such shareholders and of the markets, and adopt a strategy which is in the best interest of all shareholders and of the company,</p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>It is strongly encouraged to have a collective communication strategy and communication plan for the Bidder and Target, both internally and externally. External assistance shall be demanded if the company has a certain size and importance. A timeline shall be established to coordinate the exact moment when information shall be communicated internally and externally.</p>

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<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Takeovers do not change the legal and economic situation of the employees of the Target. The Bidder will have to respect all engagements taken by the Target prior to the acquisition and ensure that he complies with all prior commitments.</p> <p>Employee representatives or work councils have to be informed about their and the companies duties, which arise during or after the transaction.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>It is strongly encouraged to adopt a compliance strategy and to plan and verify if all objectives have been fulfilled. If duties have not been met, the Bidder and the Target shall do everything which is in their possibility to take the needed actions to fulfil such obligations.</p>

THE NETHERLANDS

Hans Witteveen

Stibbe

Topic / Board's role	The Netherlands ⁵⁷
<p>8. Preparation of the transaction</p> <p>8.1 When should the board get involved?</p>	<p>Dutch law does not prescribe when the shareholders or the purchaser should inform the (board of) the company. Once the board is informed about - or itself initiates - the potential transaction, the board should act in the best interest of the company, its business and all of its stakeholders. The assessment of a transaction must be made against that background, whereby the board should also take into account the continuation of the current strategy or other available strategic alternatives. In doing so, the board is responsible for weighing up the different interests to promote the enduring success of the company. If the company has a two-tier board system comprising a management board and a supervisory board, it is customary and advisable that the management board informs the chairman of the supervisory board at an early stage of any potential transaction.</p> <p>Under Dutch law, any decision regarding the future strategy of the company is within the remit of the board. The decision to enter into a transaction should therefore be made by the board. When making its decision, the board should assess whether the transaction is in the corporate interest of the company. Even though some board members may take a more active role than others, either or not as a result of establishing special committees, the board as a whole remains responsible for the management of the company (and may be liable in the event of mismanagement).</p> <p>If the company has a supervisory board, the articles of association of the company will typically require the management board to obtain the consent of the supervisory board for any material transaction.</p> <p>For N.V.'s (which is the legal form that Dutch listed companies must have), it is important to note that decisions of the board that concern an important change in the identity or character of the company are subject to the approval of the general meeting of shareholders. The Dutch Civil Code provides three – non limitative - examples of such decisions: (i) a sale of the company (or a substantial part) to a third party (ii) the start or termination by the company of a long-term cooperation with another company and (iii) the acquisition or disposal of an interest in the capital of</p>

⁵⁷ Duties of board members under Dutch law are generally based on provisions of the Dutch Civil Code (containing both general civil law as well as company law), Dutch securities laws and possibly stock exchange rules, as well as the Dutch Corporate Governance Code. Please note that the Dutch Corporate Governance Code, which applies to listed companies with a registered office in the Netherlands, is currently being amended. An amended version may come into effect as of 1 January 2017. The requirements in this chapter are based on the Dutch Corporate Governance Code as is currently in effect as of June 2016 ("CGC").

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	<p>another company with a value of at least one third of the amount of the company's assets. The works council, if any, has a right to present its point of view to the general meeting prior to the general meeting in which the approval is given.</p>
<p>8.2 How to cover confidentiality issues within the board</p>	<p>Despite there not being under Dutch corporate law a general confidentiality provision pursuant to which the board members are obliged to keep internal matters of a company confidential, such obligation could be derived from the obligation of each director vis-à-vis the company to properly perform his or her duties. In addition, most directors would have either an employment agreement or management services agreement in place that includes customary confidentiality provisions.</p> <p>Information relating to a public offer involving the company or another significant transaction usually constitutes price sensitive information. By law, a company must forthwith publish such price sensitive information. However, under circumstances, publication may be delayed. The board is responsible for the decision whether or not publication may be delayed. A company may delay publication if the following three cumulative conditions are met: (i) the delay must serve a legitimate interest of the company, (ii) the delay will not mislead the public, and (iii) the company is able to safeguard the confidentiality.</p> <p>In relation to (iii), a company must take adequate measures to restrict access to the price sensitive information to persons who, in connection with 'the performance of their work, profession or position', need to be aware of that information and by taking measures allowing immediate publication of the price sensitive information if the confidentiality can no longer be guaranteed. To safeguard confidentiality, it is advisable to enter into a non-disclosure agreement (and possibly a standstill agreement) before the company continues any discussions with an interested party. In addition, listed companies must keep a conclusive insider list of people who may have knowledge of inside information (which must also include external advisors).</p> <p>A listed company must notify the AFM (Netherlands Authority for the Financial Markets) that it has delayed publishing price sensitive information. This notification must be made immediately after the information is eventually disclosed to the public and the company must keep a written explanation of how the conditions of the delay were met. Such explanation must be provided to the AFM upon request.</p> <p>For implications in relation to conflicts of interest we refer to 4.2 below.</p>
<p>8.3 How to organise the board's involvement?</p>	<p>There are no mandatory provisions in this respect. Various measures can be put in place depending on what the board deems necessary, in relation to, e.g., managing conflicts of interests and</p>

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	confidentiality issues. Some of these issues may well be included in board rules. The board should ascertain that it obtains adequate information to properly assess whether the intended transaction is in the corporate interest of the company.
8.4 Need for Special committee(s)?	<p>No special committees are required by law. In practice, however, it is customary to create a committee of board members and/or other employees and advisors which acts as deal committee for the transaction. The role of the special committee is to prepare the decisions of the board, with the board maintaining overall responsibility.</p> <p>Listed companies must, pursuant the CGC, have an audit committee, a remuneration committee and a selection and appointment committee. There is no formal requirements for any of these committees to have a particular role in a significant transaction.</p>
9. Preliminary contacts at top management level 9.1 Does the board get involved proactively?	<p>As the board is responsible for the strategy of the company, the board will generally initiate a potential transaction or be involved once a potential transaction is discussed. In practice, the CEO will often have a leading role, with, in the event that the company has a supervisory board, close involvement of the chairman of the supervisory board. As a potential transaction opportunity becomes more concrete, the other board members should be informed.</p>
9.2 Is there a duty to ensure protection of confidential data?	<p>Yes. This can be derived from the general obligation of the board members to properly perform their duties.</p> <p>Several obligations apply for listed companies in view of price sensitive information (please see paragraph 1.2 above) and to prevent insider trading (please see paragraph 2.4 below). It is advised that the board members ascertain that these obligations are complied with.</p>
9.3 What to do in case of leakage or rumours in the press?	<p>It is common practice to prepare an emergency press release in advance for when a leak occurs.</p> <p>In the event that the company can no longer guarantee the confidentiality of any price sensitive information (e.g. the information appears in the press, or stock price fluctuations suggest a leak) the company must forthwith publish the information (please see paragraph 1.2).</p> <p>In cases where the target has not been previously approached (hostile offers), the target's board may request from the AFM (Netherlands Authority for the Financial Markets) that it takes appropriate measures to require a publication of a press release from companies/investors which are suspected to prepare a</p>

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	transaction ("put up shut up" procedure).
9.4 Prevention of insider dealing	
<ul style="list-style-type: none"> • Vis-à-vis board members themselves and other individuals potentially involved 	<p>A listed company is required to maintain an insider list and it is recommended that the company maintains an insider trading policy or code of conduct.</p> <p>The insider list should contain the following information:</p> <ul style="list-style-type: none"> (a) the names of all persons who may have knowledge of inside information. A distinction can be made between list of permanent insiders and a list of deal-specific/event based insiders; (b) the reasons why these persons appear on the list; (c) the date and time on which these persons obtained access to inside information; and (d) the dates on which the list was compiled and updated. <p>The insider list should be updated promptly and must be archived (in electronic form, accessible and secured) for at least five years after it is compiled or updated. The outdated information must also be archived.</p> <p>The company should take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.</p>
10. Review of the terms of the transaction	
10.1 Principle and scope of review	<p>The board should review the financial/strategic/social aspects of the proposed deal. Therefore, the board should assess whether the transaction would be in the corporate interest of the company and its stakeholders (e.g. the shareholders, employees etc.), also compared to continuing the current strategy or other available strategic alternatives. The board is responsible for weighing up the different interests to arrive at the strategy best serving the enduring success of the company.</p> <p>In companies with a two-tier board system, the articles of association or board rules will generally provide that a material transaction requires approval of the supervisory board.</p> <p>With respect to a listed target company, in addition to the above, the board will have an obligation, under the Dutch rules governing public bids, to publish a formal position statement (see also 4.1 below), in which the following items should be addressed:</p>

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	<ul style="list-style-type: none"> the opinion of the board about the consideration offered the prognoses that have determined the value of the consideration (with financial information supporting the opinion of the board) the consequences of the public offer for the employees; and other information necessary for a proper evaluation of the offer. <p>Under the bidding rules, the board must convene an extraordinary meeting of shareholders to discuss the offer.</p>
10.2 Appointment of an ad hoc committee	It is not required to appoint an ad hoc committee, but in practice companies do sometimes appoint an ad hoc committee in view of the acquisition (both targets and bidders).
10.3 Role of the audit committee (optional except for listed companies and financial institutions)	There is no specific task of the audit committee in this respect, but the audit committee does focus on supervising the activities of the board with respect to the operation of the internal risk management and control systems and may, but does not have to, also be involved in the preparation of the decision-making regarding the transaction.
10.4 Employee representatives (if any on the board) <ul style="list-style-type: none"> Can their presence be limited? 	<p>It is not required to have employee representatives on the board or to have employee representatives attend any board meetings. However, please note that there are other (mandatory) rules that give employee representatives direct or indirect influence in the corporate governance and in the event of a significant transaction.</p> <p>In the Netherlands, the works council has the right to advise on a number of contemplated decisions taken by the management of a company, such as the transfer of control over the company. Generally, a transfer of shares changing the control over the company will trigger such right of advice for the works council of the target. Under certain circumstances, a transaction could also trigger a right of advice for the works council of the bidder. The advice in respect of an important decision resulting in a change of control must be requested at such point in time that the works council's advice can (still) influence the actual decision. In other words: the advice is to be requested when the contents of the contemplated decision are sufficiently determined, but before such decision is actually taken (i.e. before a binding agreement is signed). In addition, the trade unions (if applicable) should be notified of the transaction before any public announcement regarding the potential transaction is made.</p> <p>In the event of a friendly public offer on listed targets with cooperation of the board of the Target, such decision of the board</p>

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	<p>is subject to a right of advice for the works council. In a public bid transaction, the advice of the works council may be a condition in the merger agreement. Hence, the moment of asking the works council for advice in a public transaction is arguably later in time (i.e. after signing a binding agreement) than in the event of a non-public transaction (i.e. before signing a binding agreement). The notification to the trade unions can be delayed if securities law (i.e. price sensitive information, please see paragraph 1.2 above) would prohibit notifying the trade unions before any public announcement is made. The trade unions should in any event be notified once a public announcement is made (i.e. simultaneously).</p> <p>If the board of the target has received a position statement of the representatives of the works council on the consequences of the public offer on the employment, this should be included in the public offer documentation.</p> <p>A special set of rules is applicable to the relation between the board and the works council under a 'large company regime'. A 'large company regime' applies if the company meets certain thresholds (e.g. issued capital amounts up to € 16.000.000 or more and the company and their subsidiaries employ on average at least one hundred employees in the Netherlands and have installed a works council). Under such a regime, the works council has additional rights. The works council may for instance nominate for appointment a third of the supervisory board members.</p>
<ul style="list-style-type: none"> • How to ensure confidentiality? 	<p>All members of the works council and the trade unions are subject to an obligation of confidentiality.</p>
<p>10.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p>There is no requirement to appoint an independent expert. In public bids, it is common practice for the target to request a fairness opinion by a financial advisor. When a fairness opinion has been requested by the bidder, the bidder must disclose the following information about the fairness opinion: the name and the functions of the independent expert (and the other functions that such expert has) and the gist of such fairness opinion. If the target has obtained a fairness opinion, the target must disclose the same information as part of its position statement (please see below).</p>
<p>11. Board's decision</p>	
<p>11.1 Approval of opinion on the transaction</p>	<p>The board of the target is under an obligation to publish a position statement with respect to the public offer, prior to the extraordinary general meeting in which the public offer is discussed, which includes, inter alia, the opinion of the board on the consideration offered, the prognoses that have determined the value of the consideration (with financial information supporting the opinion of the board on the consideration), as well as the consequences of the public offer for the employees and other information necessary for</p>

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	a good evaluation of the offer. This is included in the public offer documentation.
11.2 On conflicts of interests	Board members that have a direct or indirect personal conflict of interest may not participate in the deliberation and adoption of resolutions. If, as a result, no management resolution can be adopted, the resolution is adopted by the supervisory board. Where there is no supervisory board, the resolution is adopted by the general meeting, unless the articles of association provide otherwise.
11.3 Publicity	Bidder and target should ensure that an appropriate plan (for internal and external communication) is in place. We also refer to paragraph 1.2 in relation to price sensitive information in this respect.
11.4 Merits	In the event of a public bid, the boards' decision should be motivated to cover the items included in paragraph 4.1.
12. Shareholders' activism 12.1 Board's implication	Under Dutch law, the strategy of the company is part of the management board's competence, supervised by the supervisory board if the company has a two-tier board system. The general meeting of shareholders can make its opinion known by exercising the rights that it has pursuant to the law and the articles of association. The board is accountable vis-à-vis the general meeting of shareholders, but other than any provisions in the articles of association that provide for a right of approval of the general meeting, the board has no obligation to consult the general meeting when contemplating entering into transactions. It is noted that with respect to N.V. under Dutch law, Management board resolutions resulting in a significant change in the identity or character of the company are subject to the approval of the general meeting. We refer to paragraph 1.1 above in this respect. Shareholders may under circumstances have the right to request inclusion of items on the agenda of a general meeting of shareholders or even trigger a general meeting of shareholders to be convened. Activist shareholders may use these rights to force the company to consider certain strategic decisions. There is no set approach under Dutch law that the company must follow in response to activist shareholders, but companies may develop strategies in that respect or decide on an ad-hoc basis depending on the nature of the approach.
13. Communication 13.1 Communication Plan	No specific requirements apply in this respect, other than obligations to make publications under applicable securities laws (price sensitive information) and possibly bidding rules (please see also see paragraph 2.3 in this respect).

Topic / Board's role	The Netherlands ⁵⁷
14. Duties post transaction 14.1 Vis-à-vis employees	<p>In public transactions it is not uncommon that non-financial terms of the transaction include commitments re employees. If any such commitments in relation to the target or the target's employees were made, the board should ensure that such commitments are complied with.</p>
14.2 Vis-à-vis company	<p>Aforementioned non-financial terms can also include items unrelated to employment, such as with respect to location main office, R&D commitments, etc. Occasionally arrangements have been included to safeguard the compliance with such commitments post-completion. Such arrangements may include an oversight role for independent directors.</p>

PORTUGAL

Gonçalo Castro Ribeiro

Garrigues

Topic / Board's role	Portugal
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p>According to the recommendations of the Portuguese Securities Commission (“Comissão do Mercado de Valores Mobiliários”, or “CMVM”), the (i) strategy and general policies of the company, (ii) business structure of the group and (iii) strategic decisions due to economic figures, risks or special features involved, shall remain within the authority of the board, and not be delegated in any person, committee or department.⁵⁸</p> <p>Preliminary steps to prepare such decisions may be taken prior to board involvement.</p> <p><u>Target</u></p> <p>Generally the board would be involved at least upon receipt of an offer (binding or not).</p> <p>Preliminary preparatory contacts with the Target would normally be pursued with the Chairman, CEO, etc. and not at the entire board level (in any case, see 2.1 below).</p> <p>If the Board suspects that the company could be subject to a bid but no contacts were made, it may choose to require the implementation of a process in order to (i) monitor key vulnerability factors, including valuation of the Company, <i>evolution of market prices/movements of the Company's shares</i>, (ii) <i>understand the perception of analysts' publications</i>, (iii) maintain regular and close contact with main shareholders and (iv) assess possible defence measures in case of hostile approaches.</p> <p><u>Bidder</u></p> <p>Usually the board would be involved at least to take the decision to make or not to make an offer (binding or not).</p> <p>However, if the transaction would be outside the scope of the company's strategy, policies or business structure, the board should be involved even to decide whether preliminary approaches should be sought or not.</p> <p><u>Target and Bidder</u></p> <p>Notwithstanding the foregoing, board members must comply</p>

⁵⁸ The CMVM recommendations work under a “comply or explain” principle for listed companies and as simple soft law recommendations for the other Portuguese companies. The “Instituto Português de Corporate Governance” has also published recommendations on this matter

Topic / Board's role	Portugal
	with general fiduciary duties which may require board involvement even at a very early stage of the process.
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>Any member of the board that has a conflict of interest (directly or through or on behalf of a third party) should inform the chairman and refrain from voting at relevant meetings.</p> <p>A director cannot compete with the company (either directly or through or on behalf a third party), unless it is authorised to do so by the shareholders' meeting. The shareholders' meeting resolution that authorises the director to compete shall also determine the level of access of the director to sensitive information and the rules applicable to such access.</p> <p>There may be an already operating disclosure committee or the board may establish an ad-hoc disclosure committee to assess and deal with disclosure requirements issues.</p> <p>See 2.2 below.</p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <p>Various measures can be put in place:</p> <p>Drafting of internal rules (in particular to manage the conflict of interests and the confidentiality issues).</p> <p>Setting up of specific sub- committees able to work and meet with more flexibility and frequency than a full board (See 1.4 below).</p> <p>Drafting of an agenda and a road map (accurate planning of meetings, monitoring of the communication policy) (see also Section 6.1).</p> <p>Reflection on how to interact with the company's management (some meetings of the board could be hold without the presence of the management representatives and executive directors, others with their internal feedback).</p> <p>Careful recording of the deliberations (testifying a consistent and orderly process review and justifying the choices made and the decisions taken).</p>
1.4 Need for Special committee(s)?	<p>Generally not required.</p> <p>The board may allocate certain powers to a board member, several board members or a sub-committee to deal with specific aspects of the management of the company, unless such possibility prohibited by the bylaws.</p>

Topic / Board's role	Portugal
	<p>Additionally, some companies establish strategic committees, composed of board members and/or other persons, and grant them powers to approve binding or non-binding opinions on strategic issues.</p> <p>Depending on the shareholder structure and other features, such strategic committees may be composed of persons related to the main shareholders or independent of the board and of its main shareholders.</p> <p>In certain transactions involving a board member, the audit committee/supervisory board must take part in the process and give a binding opinion.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>See 1.1 above. Usually the board would only get involved at a preliminary stage in case of strategic changes.</p> <p><u>Target</u> (in case of preliminary contacts with Target's management)</p> <p>See 1.1 above. Usually the board would not get involved at a preliminary stage.</p> <p>However, involvement of the board may be difficult to avoid if the Bidder wishes:</p> <ul style="list-style-type: none"> • to have access to a data room before any firm commitment, in order to assess its own valuation of the Target and its forecasts regarding future synergies; • to ensure that the Target will cooperate (notably with a favourable recommendation to the transaction and assurance it will not solicit "white knights"); • to seek exclusivity undertakings from the Target company.
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Board members should protect confidential information in general.</p> <p>Board members of the Target should review what protective measures have been put in place to protect any confidential information the Target provides to the Bidder within the contacts and negotiation process (NDA, insiders list, limitation of involved and informed persons, code names, etc.).</p> <p><i>Even when protective measure concerning confidential information</i></p>

Topic / Board's role	Portugal
	<p><i>are implemented as described above, and therefore confidential information is provided to the Bidder, the information provided to the Bidder cannot include inside information (essentially, price sensitive information), unless such information is simultaneously disclosed to the public.⁵⁹</i></p> <p><i>As regards third parties, strict confidentiality must be observed on the preparation of the offer until publication of the preliminary announcement.</i></p> <p><i>Insider dealing rules apply (see 2.3 and 2.4 below).</i></p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p><i>In case the rumour involves inside information, a complete and clear statement denying or confirming the rumour (giving the appropriate details) should be immediately disclosed.</i></p> <p><i>The board should make sure that appropriate communication tools have been prepared.</i></p> <p><i>In the case where the Target has not been previously approached (hostile tactics), the Target's board may request from the CMVM that it takes appropriate measures to require the publication of a press release from companies/investors which are suspected to prepare a transaction ("put up shut up" procedure).</i></p>
<p>2.4 Prevention of insider dealing</p>	<p><u>Bidder and Target</u></p>
<ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<p>YES.</p> <p><i>Members of the board are by law and must be recorded on an insider list.</i></p>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<p>YES.</p> <p><i>The insider list shall include any employee or other person providing services to the company who has access to inside information.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>Board should review the financial/strategic/social aspects of the proposed deal (Target's valuation, synergies, impact on financial structure and accounts, impact on employment, impact on IP rights, execution risks, etc.).</p>

⁵⁹ This rule also applies to "white knights" solicited by the Target as a defense measure against an hostile offer-

Topic / Board's role	Portugal
	<p>Should also review the main findings stemming from the due diligence to discuss with the management how the risks identified in the DD are being addressed (off balance sheet commitments, potential impact on customers, key management, retention, environmental risks, material litigations, etc.).</p> <p>Board should also ensure that:</p> <ul style="list-style-type: none"> the acquisition contract's terms adequately cover the risks identified and ensure a secured path to closing; and appropriate integration and retention plans are in place or being prepared.
3.2 Appointment of an ad hoc committee	See 1.4 above.
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and/or Target</u></p> <p>See 1.4 above. In certain transactions involving a board member, the audit committee/supervisory board must take part in the process and give a binding opinion.</p> <p>The audit committee may help the board in the assessment of the impact of the proposed transaction on the company's financial statements and its potential risks in terms of financial structure.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p>Employees' representatives do not have rights to attend meetings of the board or of any special committee.</p> <p>Additionally, as the transaction usually involves a transfer of an undertaking, the employees' representatives shall be informed and consulted about the transaction, with the aim of obtaining their support to the transaction.</p> <p><i>Refer to 4.1 below, on information to be supplied within tender offers concerning employment conditions.</i></p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>Except as indicated above, all information concerning the transaction and the companies shall remain strictly confidential and not be disclosed to employees' representatives.</p> <p><i>Regarding listed companies, the communication of an inside information to a person who does not need to know it in the normal course of his/her function is a market abuse, subject to criminal and administrative sanctions.</i></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee 	<p><u>Bidder and/or Target</u></p> <p>Depending on the specific features of the transaction, an independent expert may be required, for example:</p>

Topic / Board's role	Portugal
<ul style="list-style-type: none"> • Role 	<p>(a) If the transaction involves contributions in kind to be made by either party, an independent expert must be appointed to determine a fair value for the assets being contributed;</p> <p>(b) <i>In some tender offers, the consideration calculated according to the general rules may be deemed unfair, and so an independent expert is appointed to determine the fair consideration;</i></p> <p>(c) <i>In some offers (usually, when a prospectus is required), a financial institution must be appointed to provide professional assistance to the offer.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>Strongly recommended in case the making of the transaction is a strategic decision. See 1.1 above.</p> <p><i>In case of a take-over bid, the Target's board must inform the representatives of its employees or, failing these, the employees of the content of the offer documents and the report prepared by it, as soon as these are made public, and issue a reasoned opinion on the pros and cons of the bid, its consequences for the company and its shareholders.</i></p> <p><i>The Bidder must also include in the prospectus its intentions with regard to the continuity or change of the businesses, with regard to the safeguarding of jobs and terms of employment of their employees and management, in particular the possible repercussions on the locations of the companies' places of business, maintenance of the publicly traded status of the Target and trading on a regulated market of the securities.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>See 1.4 above concerning transactions involving board members as a party to those transactions.</p> <p>In addition, the board should review the situation that may be caused by potential or actual conflicts of interests.</p> <p>Board should review the situation that may be caused by potential or actual conflicts of interests.</p>
<p>4.3 Publicity</p>	<p><i>Bidder and Target should ensure that an appropriate plan (for internal and external com) is in place.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p>

Topic / Board's role	Portugal
	Boards' decision should be motivated to cover the items listed under paragraph 3.1 (strong recommendation).
5. Shareholders' activism 5.1 Board's implication	<p><u>Any listed company</u></p> <p><i>The Board should be closely involved and make sure to</i></p> <ul style="list-style-type: none"> • <i>Receive regular information (setting up of a watch program) in order to better understand the activists' strategy, their nuisance level and their requests;</i> • <i>Watch the market/shareholders reactions;</i> • <i>Analyse the activists' requests against the company's corporate interests and the consistency of the company pre- defined strategy;</i> • <i>Review the level of leeway for finding a balanced compromise;</i> <p><i>Take control of the communication without allowing the activists to drive it.</i></p>
6. Communication 6.1 Communication Plan	<p><u>Bidder and Target</u></p> <p>Bidder and Target boards should review and approve the press releases regarding any financial issues/communication;</p> <p><i>For listed companies, board should appoint a PR agency at the initial stage of the process.</i></p>
7. Duties post transaction 7.1 Vis-à-vis employees	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure commitments (including vis-à-vis Target employees) are complied with.</p>
7.2 Vis-à-vis company	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure integration plans are implemented.</p>

SOUTH AFRICA

Xolani Ntamane - Ezra Davids - Tyla De Bruyn

Bowman Gilfillan

Topic / Board's role	South Africa
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>When a transaction ensues, oftentimes, initially, the Target is unaware. However, the Bidder may contact management or the board to attempt to engage in some form of discussion regarding the proposed transaction. An initial approach regarding a possible takeover of the Target, or the actual offer itself, must be made through the board of the Target.</p> <p>As a matter of law, if an offer is either pending or has been actually made, the board of the Target must immediately constitute an “independent board” of at least three persons. The independent board could be constituted of both existing members of the board who meet the independence test, and if there is a shortfall, it could co-opt an outside person in order to ensure that the independent board is quorate. The independent board may then require reasonable evidence that the Bidder will be in a position to implement the offer.</p> <p>If the board suspects a bid, it may choose to monitor key vulnerability factors and to engage with key shareholders. Each member of the board is required to take all reasonable steps to receive all necessary information on the offer, to meet with advisors, and to allow sufficient time to discharge all duties and responsibilities.</p> <p>In the event that there is a bid pending, the board can either co-operate and facilitate the negotiation process, or implement measures aimed at preventing the successful completion of a hostile transaction, taking appropriate measures to ensure that its individual members are not in breach of their obligations not to frustrate a <i>bona fide</i> offer.</p> <p><u>Bidder</u></p> <p>As with the Target, the board of the Bidder should become involved in the potential transaction as soon as possible.</p> <p>The board should approve long and short term strategies for the company and monitor their implementation. Soft law (through the King Code of Corporate Governance in South Africa (King III)⁶⁰)</p>

⁶⁰ The King Report on Governance for South Africa 2009 (the **Report**), the King Code of Governance Principles for South Africa 2009 (the **Code**) and Practice Notes to King III issued by the Institute of Directors which provide guidance regarding the implementation of the Code, (collectively comprising King III), establish the body of corporate governance principles and recommendations applicable to companies and boards. King III

Topic / Board's role	South Africa
	requires that before approving a strategy or a transaction, the board should ensure that it is aligned with the purpose of the company, the value drivers of the business and the legitimate interests and expectations of the company's stakeholders.
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>All negotiations between the Target and the Bidder must be kept confidential.</p> <p>Confidentiality must be observed before a cautionary announcement or a firm intention announcement, relating to price sensitive information is made. Although price sensitive information may be provided to select persons on a confidential basis (typically through a non-disclosure agreement), if there is a leak of price sensitive information, or a reasonable suspicion of a leak, that information must immediately be disclosed in a cautionary announcement.</p> <p>The obligation on a director to disclose all information to the board is limited by any legal obligation of confidentiality.</p>
1.3 How to organise the board's involvement?	<p><u>Bidder and Target</u></p> <p>In the context of an offer, an independent board must be established comprising of a minimum of three independent directors, and if there are less than three available, other persons must be appointed by the existing board. The dealings of the independent board should be captured in terms of reference, which deal with items such as the independent board's composition, objectives and reporting mechanisms. The independent board may determine the extent of a non-independent director's attendance at meetings.</p> <p>The board must set up specific sub-committees or ad-hoc committees, as required, with clearly agreed reporting procedures and a written scope of authority/ terms of reference (including at a minimum composition, objectives, purpose and functions, delegated authorities, tenure and reporting mechanisms).</p>
1.4 Need for Special committee(s)?	<p><u>Bidder and Target</u></p> <p>Boards can also establish, on an ad hoc basis, special independent committees which have specific mandates. This is a requirement if the board does not have the necessary skill or expertise to satisfy its fiduciary duties on a matter.</p>

adopts an 'apply or explain' approach to corporate governance. This means that the board, in its collective decision making, could conclude that following a recommendation would not, in the particular circumstances, be in the best interests of the company. The board could decide to apply the recommendation differently or apply another practice and still achieve the objective of overarching corporate governance principles of fairness, accountability, responsibility and transparency. Certain principles from King III have been carried into the JSE Listings Requirements and the Companies Act. The draft King IV report has been released for public comment. King IV aims to make governance principles more accessible and extends its reach to state-owned entities, non-governmental organisations and municipalities as well as companies.

Topic / Board's role	South Africa
	See also 1.3 above in respect of the independent board and Section 3.5 on the role of the independent expert.
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>It would not be common for the board of the Bidder to have contact with its counterpart or management at the Target, particularly at preliminary stages of the proposed transaction.</p> <p>Typically a sub-committee of the board working closely with management and the Bidder's advisors would head this aspect of the transaction, acting in accordance with a restricted mandate.</p> <p><u>Target</u></p> <p>An approach, with a view to an offer being made, or an offer, must be made only to the board of the Target, whereafter an independent board must be constituted immediately. The board of the Target must be provided with reasonable evidence from the Bidder that the Bidder is in a position to implement the offer in full.</p> <p>Each member of the independent board of the Target must take all reasonable steps to receive all necessary information and must meet with any appointed advisor to be briefed on all details of an offer.</p> <p>The independent board will obviously need to be engaged to the extent that the Target is required to sign any exclusivity, confidentiality or other preliminary undertakings.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Yes there is (see section 1.2 above) and <i>with particular strength in the case of listed companies.</i></p> <p>In terms of the Companies Act, 2008 (the Companies Act), it is an offence to disclose any confidential information concerning the affairs of any person or entity obtained in carrying out any function in terms of the Companies Act. The Financial Markets Act, 2012 (the Financial Markets Act) prohibits the unauthorised disclosure of inside information and the act of insider trading (as more fully described in section 1.2 above). In addition, the board of each of the Bidder and the Target also have a fiduciary duty to protect the interests of their respective companies.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p>The board would be required to release a cautionary</p>

Topic / Board's role	South Africa
	<p>announcement. Cautionary announcements generally contain a warning to shareholders that they are advised to exercise caution when dealing in a company's securities. The JSE Listings requirements require that cautionary announcements contain a disclosure of all available details regarding the information that is the subject of the cautionary announcement.</p>
2.4 Prevention of insider dealing	
<ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p><u>Bidder and Target</u></p> <p>The board shall be informed of their duties to the company regarding confidentiality by either their legal counsel or the chairman of the board. Another deterrent to insider trading is the criminal sanctions for the transgression of confidence. Penalties for insider trading in terms of the Financial Markets Act are harsh and include criminal, civil and administrative sanctions.</p> <p>The board must refrain from divulging information to persons within the company who do not have a direct involvement in the matter as this could leave the company vulnerable to insider trading.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and target</u></p> <p>The board should review the specific facets comprising the proposed deal, such as the financial, strategic and social aspects. It is important that the board is made to understand these elements with regards to the relevant sector/economy in order that the review can have a meaningful and effective purpose.</p> <p>Boards should have informed dialogue with senior managers that assist management in creating more refined strategic options for consideration. Board members should approach these discussions with the goal of helping management to broaden its thinking by considering new perspectives.</p> <p>The following specific facets should be reviewed in detail:</p> <ul style="list-style-type: none"> • competitors; • key external trends and risks likely to affect the business; • the valuations of the opposing company; and • the impact on financial structure and accounts.

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<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and Target</u></p> <p>This is suggested (see 1.4 above).</p> <p>Committees such as the audit committee and the risk committee and any special independent committees (see 1.4 above) may be helpful in bringing a different perspective on certain strategic, governance and value-related issues to the independent board of the Target and the board of the Bidder.</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>The audit committee should be an integral component of the risk management process concerning the transaction and its impact on the company.</p> <p>The committee reviews the agreements which may have an impact on the company's valuations and also determines the valuation of the Target company. The committee is the gate-keeper which ensures that the company is fiscally sound and therefore minimizes the risk of unexpected issues arising when the implementation of the transaction ensues⁶¹.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	<p><u>Bidder and Target</u></p> <p>No. In South Africa, a number of enterprises have introduced voluntary structures to involve employees in aspects of decision-making in order to enhance cooperation between labour and management and to promote employee stake holding and involvement in the value creation process.</p> <p>If an individual is placed on the board their presence cannot forcefully be limited by the other members of the board or the management. However, their input may be curtailed due to the fact that the board intends to act in the best interest of the shareholders and not necessarily the employees, converse to the employee representatives, so the interests of the employee representative may not be greatly supported when decisions are to be made.</p> <p>With regard to confidentiality, a board member in attendance at a confidential meeting/negotiation will be held to the same standards as any other member of the board, irrespective of such board member being an employee representative. Such board member would merely 'wear two hats' and be required to uphold the interests of the company with regards to confidential information (see 2.2 above).</p>

⁶¹ Section 94 of the Companies Act expounds on the role of the audit committee.

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<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>The Takeover Regulations require the Target to retain an independent expert for the purposes of preparing a 'fair and reasonable' opinion. This opinion must be communicated to the Target's security holders.</p> <p>The independent expert's report must, amongst other things, state all prescribed information relevant to the value of the securities affected by the transaction.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and/or Target</u></p> <p>The independent board must take cognisance of the fair and reasonable opinion referred to in 3.5 above in forming its own opinion on the offer consideration.</p> <p>The independent board must become properly informed of the Target's value per security, advise the shareholders on the merits of the offer, and take all reasonable steps to obtain all information necessary to reach a fully informed opinion.</p> <p>All fundamental transactions (which include schemes of arrangement, sales of the greater part of the assets/undertaking of the Target and mergers/amalgamations) require approval by way of a special resolution (75%) by the shareholders of the Target and may require court approval if either:</p> <ul style="list-style-type: none"> there is a significant minority (at least 15%) opposed to the transaction and any person who voted against the resolution requires the company to seek court approval; or the court grants leave to a single dissenting shareholder. <p>In both instances the court may only set aside the resolution on the grounds of procedural irregularity or a manifestly unfair result.</p> <p>The Companies Act also provides a dissenting minority shareholder with an appraisal right to have their shares repurchased at fair value.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>A board member with a conflict of interest is compelled by the Companies Act to bring it to the board's attention as soon as they become aware of the conflict. Thereafter, the director concerned must assume a non-independent status (falling which the board may declare the director to be non-independent). A non-independent director will be barred from voting or participating in</p>

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	<p>the deliberation of the offer, however, nothing stops such non-independent director from either attending a meeting by invitation and/or to make his/her views known.</p> <p>The same would go for executives on the board, owing to their fiduciary duty to the company.</p>
4.3 Publicity	<p>Having regard to the regulations relating to insider trading and directors' duties to maintain confidentiality, the Bidder and the Target should ensure that non-disclosure agreements are put in place, which require the parties to maintain confidentiality and alert the parties to the fact that inside information might be disclosed.</p> <p>Furthermore, the Bidder and the Target should develop a strategy for communication, along with appropriate contingencies, such as a leak strategy.</p>
4.4 Merits	<p>The board's decision should reflect the outcome of the matters reviewed in terms of 3.1 above, having regard to the best interests of the company and creating value for the shareholders.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Listed Companies</u></p> <p>The board should prepare for shareholder activism and respond by:</p> <ul style="list-style-type: none"> • monitoring the company's ownership and understanding the activists; • developing an engagement plan that is tailored to the company's shareholders and the issues that the company faces; • objectively considering the activist's ideas; • looking for areas around which to build consensus; • actively engaging with the company's key shareholders; • taking control of the communication without allowing the activists to drive it; and • taking care not to engage in any conduct that is directed at frustrating an offer made in good faith.
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p>Where either the Bidder or the Target is a listed company, it should prepare a leak strategy setting out and clarifying:</p> <ul style="list-style-type: none"> • the manner in which information relating to the

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	<p>transaction will be treated;</p> <ul style="list-style-type: none"> • how the board should deal with any leaks or potential leaks of information, including speculation in the market; and • the Company's obligations under the Financial Markets Act and the JSE Listings Requirements. <p>At the stage when the transaction is to be announced to the general public, general market practice is for an announcement to be prepared jointly by the Bidder's and the Target's advising counsel and published on the Stock Exchange News Service.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Integration of the employees, bearing in mind any concessions to regulatory/governmental authorities relating to any moratorium on retrenchments relating to the transaction.</p> <p>Ensure that the employment contracts have been transferred if necessary and that the employee's roles within the company are well defined.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>The board, along with management, should ensure that integration plans are implemented.</p> <p>The Target should prepare and maintain a checklist agenda to keep track of post-closing items and ensure that each item is actioned as and when required.</p>

SPAIN

Christian Hoedl

Uria Menendez

Strategic transactions, including the acquisition or disposal of material assets or businesses, tender offers and joint ventures, are prone to conflicts of interest between the directors and the shareholders (and other stakeholders), and amongst majority and minority shareholders. The following table focuses on the obligations and duties of the directors.

The role of the board of directors in strategic transactions must be analyzed against the background of two overriding (**mandatory**) rules of Spanish corporate law:

Directors are bound by duties of care and loyalty. The duty of loyalty obliges the directors to act as a loyal representative, in good faith and in the best interests of the company (corporate interest); and to abstain in the event of any conflict of interest (as defined by law), including in any transaction between the director (or related parties) and the company. The general shareholders' meeting ("**AGM**") may however authorize related-party transactions (and waive other conflict of interest situations) on a case-by-case basis. Please refer to Section 3.1 for a discussion of the "business judgement rule" concerning the diligent discharge by directors of their fiduciary duties in the context of a strategic corporate or business decision.

The acquisition and disposal (including by contribution to another company) of "essential" assets must be approved by the AGM; the law includes a presumption whereby assets representing more than 25% of the total assets of the company are deemed to be "essential".

These rules also apply to listed companies with certain particularities: strategic transactions and any transaction with directors or significant shareholders (those represented on the board of directors of the Company or of any group or related company, or holding a significant stake in the Company) must be approved by the Board of Directors (it may not be delegated); and the conflicted directors may not participate in the discussion or vote on these transactions.

In practice, the application of these rules will vary depending upon the shareholding structure of the Bidder and the Target and will be scrutinized closely in listed companies (in particular with a significant free-float) and private companies with a broad shareholder base.

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<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Bidder and Target</u></p> <p>Under Spanish law, any strategic decision of the company falls within the authority of the board and may not be delegated to the CEO, the executive committee or the management.</p> <p>As a result, especially for listed companies and for private companies of a certain size with a disseminated share capital, the board should be involved as soon as possible to review a potential transaction. The board of directors often intervenes at the suggestion or request of the Company's management or its significant shareholders.</p> <p>Once the board is informed of the intended transaction, it must</p>

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	<p>analyze the transaction in light of the Company's corporate interest and strategy. The board must consider if, amongst other aspects, the transaction improves the Company's future prospects and whether the consideration offered is appropriate. The board must monitor and review the transaction terms and process before adopting an informed decision thereon.</p> <p><u>Target</u></p> <p>The Target board of directors gets involved when the Bidder or the selling shareholder(s) inform(s) the board or the Chairman, or the board otherwise becomes aware of the intended transaction.</p> <p>If the board suspects that the company may be subject to a bid or other strategic transaction, the board should request information from the relevant Bidder/shareholders and, if appropriate, implement a process to analyse the key implications of the potential transaction <i>and monitor the change in market prices/movements of the Company's shares.</i></p> <p>The board must be involved when the Bidder requests access to non-public information regarding the Company (which should not be provided without the approval of the board subject to customary NDAs <i>and insider lists</i>), and must appraise the appropriateness of providing such non-public information to the Bidder (and the scope of such information). The board should also appraise the seriousness of the offer and consider obtaining alternative offers (although it is generally understood that Spanish boards are not subject to "Revlon duties").</p> <p>Subject to the duties of care and loyalty <i>and to the passivity rule</i>, the board may also consider defensive actions to prevent any hostile transaction by third parties (if deemed justified to protect the corporate interest).</p>
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>Directors are legally bound to treat information received from the Company as confidential. Confidentiality duties are reinforced in the framework of a strategic transaction.</p> <p>Additionally, by law, directors affected by a direct or indirect conflict of interest must abstain from participating and deliberating on the matter related to the conflict of interest and must notify the board of such situation. <i>In listed companies (and other large companies) when conflict of interest situations arise, a specific committee may be created (see in further detail in Section 1.4). Confidential and sensitive information might be restricted to the committee members.</i></p> <p><i>Knowledge of the potential transaction by the members of the board will usually constitute inside information falling within the</i></p>

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	<p><i>scope of the Market Abuse Regulation ("MAR"). The use of inside information is prohibited by MAR and by the Spanish securities regulations and may also constitute a criminal offence.</i></p> <p><i>Directors (as well as shareholders and other parties) who obtain inside information must refrain from disclosing the information to third parties, recommending or inducing third parties to acquire or dispose of securities, and preparing or carrying out any transaction in the securities of the company (including the attempt to do so). The prohibition does not extend to the preparation or execution of transactions whose existence constitutes the inside information.</i></p>
1.3 How to organise the board's involvement?	<p><u>Target</u></p> <p>The board of directors may consider establishing specific timelines and internal rules for the transaction, in particular to manage conflicts of interest, confidentiality issues and the role of management and independent directors. The board may also appoint a committee of independent directors (see section 1.4).</p> <p>A key aspect of any transaction is the provision of non-public/confidential information. The Target board must deliberate on the appropriateness of providing that information to Bidders in light of the company's corporate interest. The board may then authorize management and/or certain directors to provide non-public information following the guidelines issued by the board (including the terms of non-disclosure agreements to be executed with Bidders).</p> <p>If the Bidder is a shareholder of Target, the board must also justify the compliance with (or deviation from) the principle of equal treatment of all shareholders.</p>
	<p><i>In the case of a tender offer for a listed company, the board: (i) is subject to the passivity rule; (ii) must respect the principle of equal treatment of Bidders (also in respect to the information to be provided); and (iii) at a later stage of the transaction, must issue a recommendation to its shareholders regarding the offer and the proposed consideration. For the diligent management of these matters, along with any others it may wish to address (primarily defensive tactics), the board should consider (i) engaging legal and financial advisers; (ii) drafting an agenda and roadmap in light of the expected timeline for the transaction; and (iii) setting up a special committee of non-conflicted directors to deal with the transaction.</i></p> <p><u>Bidder</u></p> <p>The board may wish to implement a complete roadmap and timeline for the transaction, and approve the main terms under which the transaction may be negotiated (e.g. Target shares</p>

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	<p>involved, range of valuation, timing of the transaction).</p> <p>The board normally authorizes management and/or certain directors (the CEO, the Chairman, or the chairman of the independent committee) to prepare and negotiate the terms of the transaction with Target and its shareholders, and to retain advisors, as well as setting out the terms of the reporting requirements to the board that must be fulfilled by the persons leading the transaction.</p>
<p>1.4 Need for Special committee(s)?</p>	<p><u>Target and Bidder</u></p> <p>As a general rule, special committees are neither required by law nor customary in Spanish practice for most types of transactions.</p> <p>However, where directors are conflicted and, in particular, for transactions in which the Bidder is a (significant) Target shareholder or represented on the board, an ad hoc committee of independent (non-conflicted external) directors is advisable (<i>in practice, the Spanish securities regulator - “Comisión Nacional del Mercado de Valores” or “CNMV” - usually informally requires the creation of this committee</i>). A number of Spanish listed companies have incorporated the creation of this kind of committee into the board's internal regulations.</p> <p><i>The Good Governance Code of Listed Companies version 2015 (the “GGC”)⁶² includes a recommendation to inform the audit committee (mandatory for listed companies and certain regulated entities) about corporate transactions intended to be performed by or affecting the Company (i.e. both for Target and Bidder); the audit committee shall analyze the transaction and report to the board of directors. The audit committee reviews the transaction's financial terms, accounting impact and any share exchange mechanism. The decision of the audit committee is non-binding on the board. A number of Spanish listed companies have incorporated this recommendation into the board's internal regulations.</i></p> <p>In listed (and large) companies, the board, the independent committee and/or the audit committee should/must be advised by external experts/counsel.</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>The board of directors is not normally proactively involved in the</p>

⁶² The GGC includes recommendations for listed companies regarding good governance. This GGC determines the following: “The current corporate governance framework for Spain's listed companies accordingly comprises two differentiated tiers: (a) On the one hand, the binding provisions contained in the Spanish Company Law and other applicable laws and regulations; and (b) On the other, the corporate governance recommendations contained in the Good Governance Code, which are strictly voluntary in nature as the terms considered basic and indispensable have been written into legislation.”. The principle underlying the recommendations is that, although the compliance with the recommendations is not mandatory, companies shall explain to the market, for its evaluation, the justification for not complying (“comply or explain” principle).

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	<p>preliminary discussions and negotiations of a potential transaction. Customarily, only the management and possibly specific members of the board (executive directors who have been authorized by the board) are directly involved in such negotiations.</p> <p><u>Target</u></p> <p>At the first stages of the transaction, negotiations are often conducted between the Bidder and significant shareholders only. <i>In listed companies with no significant shareholders and/or with a significant free-float, and in private companies with a broad shareholder base, the Target board of directors may however be requested to get involved early in the process to consider any offers and decide on possible exclusivity (a sensitive issue as it limits the board's ability to obtain competing offers).</i></p> <p>The board must also authorize the disclosure of non-public information, for the performance of any due diligence (vendor's or buyer's), to assess the company's valuation prior to the offer or for antitrust matters.</p> <p>The board may also consider adopting defensive measures in the case of hostile transactions.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>YES. The members of the board of directors have a legal duty to keep confidential, and not to disclose, information they receive or provide in respect of the company.</p> <p>The Target board must decide on the confidential information to be provided (in light of the corporate interest) and implement adequate protections (non-disclosure agreements, limitations on the use of the information in the context of the transaction, etc.) to avoid the disclosure of information prejudicing the company.</p> <p>The board may also establish procedural protections such as codenames or monitoring persons with knowledge of the transaction (<i>and, for listed companies, a list of insiders</i>).</p> <p><i>In listed companies, directors are bound by insider dealing regulations, in particular with respect to inside information of the company disclosed in the context of a transaction. The board must implement the necessary measures to control the access of employees, managers and advisors to confidential/non-public information regarding the company and the transaction, as further detailed in Section 2.4.</i></p> <p><i>The boards of listed companies must also prepare a standby release regarding the transaction to be disclosed to the market in the event of a leak.</i></p>

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<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder and Target</u></p> <p><i>If the Target (or the Bidder) is a listed company, in the event of any leaks or rumours in the press regarding the transaction that might impact the market price of the Company, the CNMV will normally (i) analyze the leak or rumour (in light of prior similar news regarding the Company, the impact on the financial and accounting factors of the Company and the change in trading volumes and prices) and, if it concludes that the rumour is relevant, (ii) request information and clarification from the Target (and in exceptional circumstances, from the Bidder, in particular if it is a Spanish entity). In certain cases, if especially relevant and likely, the CNMV may (iii) suspend trading on the Target's (and/or the Bidder's) securities and (iv) issue a notice of the potential transaction and the inquiry conducted by the CNMV.⁶³</i></p> <p><i>The board of directors (in particular of the Target) should therefore prepare press releases, public disclosures and Q&As in response to potential leaks and rumours that may affect the trading volumes and prices of the Target securities.</i></p> <p>If the transaction does not involve a listed company, the board is not bound to react to leaks or press rumours but (in particular in private companies with a broad shareholder base) may want to consider preparing and implementing disclosure measures similar to those required for listed companies.</p> <p>For both listed and non-listed companies, boards of directors often consider hiring a media consultant to analyze the source of any leak, adopt the necessary measures and protections, prepare a response to any press rumours and, at the appropriate time, announce the transaction.</p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<p><u>Bidder and Target</u></p> <p>YES. As previously indicated, directors have a duty to maintain confidential any information to which they are privy on the basis of their position as a director. That duty applies to potential transactions and involves legal prohibitions against obtaining a benefit from the information available to them or performing transactions with the company (in some cases approval may be granted by the board or at the AGM with the abstention of the corresponding affected director or shareholder).</p> <p><i>By law, the board must approve and file with the CNMV internal regulations stipulating the code of conduct in connection with securities markets, applicable to all employees, managers and directors of the company, and must establish measures to prevent the use of inside information regarding its issued securities by</i></p>

⁶³ In 2009, the CNMV published its internal guidelines on how to manage news and rumours related to listed securities.

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	<p><i>board members, employees and managers.</i></p> <p><i>Members of the board are by law “primary insiders” and must be recorded on an insider list.</i></p>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<p>YES. Although management are primarily responsible for maintaining the confidentiality of the information they hold, the board must implement appropriate measures to enforce this duty.</p> <p><i>In particular, in respect of listed companies, by law the board must ensure that, when it has knowledge of a potential transaction: (i) that knowledge is limited to persons on a “need-to-know” basis; (ii) a list of insiders is prepared and the persons included on the list are warned of the confidential character of the information and the prohibition against using it; (iii) it establishes security measures for safeguarding, filing, accessing, copying and distributing the information; (iv) it monitors the market trends of the Target and Bidder securities; and (v) if the market trends are unusual, it immediately discloses a notice of a material event to the market notifying the transaction's status. The board must approve the internal regulations indicated in the preceding paragraph.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Target</u></p> <p>Although unusual (except for <i>listed companies</i>), the board may issue a recommendation to shareholders regarding the Bidder's offer. <i>In the case of tender offers, the board must issue an opinion addressed to its shareholders in which it recommends or does not recommend accepting the tender offer at the proposed consideration.</i></p> <p><u>Bidder</u></p> <p>The board must diligently analyze and evaluate the proposed transaction from a corporate interest and strategic viewpoint. The board will consider any potential synergies, the integration plan, the findings of the due diligence exercise, the transaction terms (e.g. protections to the Bidder in terms of the payment of consideration, representations and warranties), and the appropriateness of the transaction itself.</p> <p><u>Bidder and Target</u></p> <p>Under the “business judgment rule” (as applied by Spanish case-law and recently introduced into Spanish law), directors are presumed to have acted diligently in analyzing and deciding on a strategic transaction if they acted: (i) in good faith; (ii) without personal interest; (iii) with sufficient information; and (iv) following an appropriate decision-making process.</p>

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3.2 Appointment of an ad hoc committee	<p><u>Bidder and/or Target</u></p> <p>Advisable in certain cases involving a conflict of interest (see Section 1.4). <i>The audit committee will review the terms of the transaction and, in practice, ad hoc committees are often set up for specific types of transactions such as mergers or tender offers involving a related party, such as a shareholder of the Target (see Section 1.4).</i></p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p><i>Most listed companies have incorporated the GGC's recommendation to have the audit committee issue a non-binding report on the transaction to the board into their internal regulations, as stated in Section 1.4. In preparing its report, the audit committee will (i) request and collect all the necessary information (i.e. requesting that the company's directors and managers provide them with information, and seeking advice from third parties); and (ii) analyze the transaction from the perspective of the transaction's economic, operational, and reputational risks to the company and its shareholders.</i></p> <p>Non-listed and non-regulated companies do not normally have audit committees. However, as stated in Section 1.4, it may be advisable in certain types of transactions to create an ad hoc committee to propose a decision to the board. The directors may then have additional reasons to justify having acted diligently and consistent with the principles of the business judgment rule.</p>
3.4 Employee representatives (if any on the board) <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>Spanish law does not require the appointment of employees' representatives or employees themselves to the board of directors.</p>
<ul style="list-style-type: none"> • How to ensure confidentiality? 	<p><i>In listed companies, employees with knowledge of the potential transaction (such as through the due diligence exercise) would be considered insiders, and would therefore require inclusion on the insider list. The internal regulations and rules applicable to insider dealing would apply to them.</i></p> <p>In relation to non-listed companies, confidentiality is ensured pursuant to the corresponding employment agreement with the employee (implying that the employee could be dismissed in the event of his or her disclosure of non-public information and, potentially, be the subject of criminal proceedings for breach of confidentiality).</p>

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<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>Although not required by law, the board usually retains external advisors to analyze and issue a report on the transaction (e.g. information of the Target –due diligence–, price to be paid –fairness opinions–, expected synergies). These reports would give comfort to the board in connection with their fiduciary duties to evaluate the transaction in light of the Company's corporate interest, and in compliance with the "business judgment rule" described in Section 3.1.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder</u></p> <p>A strategic decision must be approved by the board and may not be delegated to the CEO, the executive committee or the management. The approval at the AGM may also be required to execute a transaction if they involve the acquisition of "significant" assets.</p> <p><u>Target</u></p> <p><i>In the case of tender offers, the Target's board must issue a detailed and justified report indicating if it is in favor of or against the offer and its opinion on its terms such as the proposed consideration and the impact on the company's strategy and employees. This report, which is usually supported by external financial advisors with relation to the consideration (fairness opinions), is disclosed in the public offer documentation.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The board must analyse conflicts of interest of the directors in the transaction, and the Chairman may inform/remind them of the measures to be adopted by the board to deal with them. Conflicted directors shall not participate in the evaluation of, deliberation on, or approval of, the transaction, or in the reports to be issued to the shareholders or the market with respect to the transaction.</p>
<ul style="list-style-type: none"> Vis-à-vis executives 	<p>The board may also prohibit the affected directors from participating in the negotiations and discussions with the counterparty in connection with the transaction.</p> <p>Same as for directors.</p>
<p>4.3 Publicity</p>	<p>The Bidder and the Target must put in place the necessary measures related to disclosures to the market as detailed in the previous Sections, and may want to implement internal and external communication guidelines and disclosures.</p>

Topic / Board's role	Spain
4.4 Merits	<p><u>Bidder and Target</u></p> <p>See Section 3.1. The board's decision must be justified.</p> <p><i>Mandatory in case of a public take over.</i></p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p>Shareholder activism in Spain is relatively unusual.</p> <p>Spanish law establishes a set of minority shareholder protections for all shareholders (information rights) or for shareholders with a certain shareholding (right to request the appointment of auditors, right to challenge corporate resolutions, right to appoint a number of directors proportionate to the minority shareholding, etc.), as well as certain limitations and protections against minority abuses (such as requests for information not required to appraise the transaction).</p> <p><i>In the framework of a tender offer it has become common for hedge funds and other investors to take positions in the Target company. The Target/Bidder may in any event wish to create a communication channel through which minority shareholders may issue their requests, and the company may consequently have an improved understanding of any shareholders' strategy, and act in response to the same.</i></p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>The Bidder and the Target may establish separate plans to communicate the transaction to employees, as well as to the market, in accordance with the principles described in the previous paragraphs. <i>Public disclosures to the market must be prepared in advance, as described in the above paragraphs.</i></p> <p>In the case of transactions other than share deals (e.g. mergers, spin-offs, asset deals), the Bidder and the seller must inform the respective employees' representatives (or the employees directly if no representatives have been appointed) who are affected by the transaction before its completion, indicating the reasons for the transaction and the impact on employment relationships. If there is any impact, the Bidder or the seller, as applicable, must initiate a consultation period with the employees' representatives (or with them directly) regarding the new employment conditions.</p> <p><i>In the case of a tender offer, the boards of the Bidder and of the Target must inform the respective employees' representatives (or the employees directly) that the tender offer has been launched, as soon as it has been made public. Once the prospectus is published, it must be provided and easily available to the employees. See Section 5.1 with relation to communication channels for</i></p>

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	<i>shareholders in the framework of a tender offer.</i>
7. Duties post transaction 7.1 Vis-à-vis employees	<p><u>Bidder and Target</u></p> <p>Ensure commitments (including vis-à-vis Target employees) are complied with.</p>
7.2 Vis-à-vis company	<p><u>Bidder and Target (if involved upfront)</u></p> <p>Ensure integration plans are implemented.</p>

SWEDEN

Clas Romander

Advokatfirman Delphi

Topic / Board's role	Sweden
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>Normally, the board of directors of the Target will be informed of the pending takeover offer through an informal contact by the Bidder, e.g. by way of a telephone call to the chairman of the board. This will often be followed up with an indicative offer or a non-binding proposal. Depending on the Target's response to the indicative bid, the board of directors will either begin negotiations with the Bidder including allowing the Bidder to conduct a due diligence. For private companies, the Target and its board of directors will be involved in order to set up a data room for the Bidder's due diligence. <i>In respect of listed target companies, the Bidder will only be able to conduct a due diligence based on public information, and there is thus no reason to involve the Target's board proactively for this reason. In the event of a hostile takeover, the board of directors should get involved as soon as possible in order to prepare protective measures.</i></p> <p><u>Bidder</u></p> <p>Under Swedish law, the board of directors is responsible for the organisation of the company and the company's affairs, and it is therefore natural that the board of directors are informed and involved of any takeover plans.</p> <p>The Bidder's takeover process is often initiated by either its financial advisors presenting potential targets of interest to the Bidder or by suggestion from within the Bidder regarding a target already known to the Bidder where possible synergies e.g. can be foreseen. In any case, the target and deal structure would normally be presented to the board of directors of the Bidder, before any actions will be taken.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>In private companies, there are no statutory regulations relating to confidentiality in connection with a bid or a takeover. The Bidder and shareholders of the Target will, however, normally have agreed and entered into a non-disclosure agreement, and in such cases the board of directors in both companies may be bound to confidentiality by contractual obligations, depending on the scope of the non-disclosure agreement.</p> <p>If a director on the board has a conflict of interest relating to</p>

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	<p>the takeover or bid (as applicable) he or she may not participate in meetings and discussions relating hereto.</p> <p><i>Directors in listed companies must treat privileged information obtained preceding a bid as highly confidential and disclosure of such information may trigger insider dealing regulations.</i></p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Target</u></p> <p>The board of directors must assess which, if any, directors have conflicts of interest. A special committee will often be set-up to compensate for any board members that cannot participate due to conflict of interest, but also to contribute with expertise and unburden the directors to some extent. A central task for the board of directors' of the Target is to evaluate the takeover offer which includes conducting an independent assessment of the company's value. This is rarely something that the directors have time and expertise for, so the directors will normally consult experts to assist herewith.</p> <p>The board of the Target must act in the shareholders' interest and their role during a bid is to assess and respond to the bid in a manner that best serves the shareholders' interest, and ultimately present a recommendation to the shareholders.</p> <p><u>Bidder</u></p> <p>The board's participation is central for the early stages of the takeover process and the directors will need to consider market development, potential synergies, target structure and other financial effect of the takeover. The board will need to consider a) how the board should divide takeover related work amongst the directors and b) which and to what extent external counsels need to be involved. In practice, the board will in many cases appoint one or two directors responsible communication with outside counsels.</p> <p>It may be difficult to determine the difference between delegation within the board and a special committee. The board of directors is a collective organ that operates based on majority decisions. However, in the event that a special committee is set up and given authorisation to individually make takeover related decisions, non-participating board members may still be held liable for decisions made by the special committee alone by way of <i>culpa in ellegiendo, instruendo vel inspeciendo</i> (i.e. negligent delegation). It is therefore in the interest of the directors that they are continuously informed of the takeover process.</p>
<p>1.4 Need for Special committee(s)?</p>	<p><u>Bidder/Target</u></p> <p>The need for special committees is determined by the competence and availability of the board of directors.</p>

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	<p><i>According to the takeover code, applicable to listed companies, the Bidders board of directors must ensure that a special committee is formed and that such committee has sufficient expertise to effectively handle the bid and takeover. This is clarified as meaning that the Bidder must rely on persons with expertise and knowledge of the Swedish stock market and its regulations.</i></p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>The board will normally be involved at the early stages of a takeover in order to assess the benefits and commercial interest in a takeover.</p> <p><u>Target</u></p> <p>As mentioned under 1.1 above, the Target will normally be approached by an informal contact to the chairman of the board of directors of the Target.</p> <p>For private companies, the Target and its board of directors will be contacted and involved in order to set up a data room for the potential bidder's due diligence.</p> <p><i>In respect of listed target companies, the Bidder will not normally engage the Target's board of director. The Bidder will only be able to conduct a due diligence based on public information, and there is thus no reason to involve the Target's board proactively for information purposes. The Bidder may however often contact shareholders with a significant stake in the Target for the purpose of entering into an exclusivity agreement. This will normally not become public before the bid since the agreement is not with the listed company but with its shareholders. This will provide the Bidder with time to prepare the bid.</i></p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>Yes. For private companies, the protection of confidential data such as know-how and confidential corporate information is part of the general duty to act in the company's interest.</p> <p><i>For listed companies, it is essential to ensure not only such information that is generally subject to confidentiality but also any information regarding a bid that may prematurely affect the Target's but also the Bidder's share price.</i></p>

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<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p><u>Bidder/Target</u></p> <p>For private companies, the board of directors may deal with leakage or rumours in their own discretion, provided the Company's best interest is in focus. A press strategy may often be a good investment for public relation purposes, although it is not a requirement.</p> <p><i>The board of directors of a listed company may be obliged to publicly inform the Stock Exchange and the public in the event of a leakage or rumours, due to a listed company's information undertaking. The extent or need of information to the public will depend on the circumstances at hand.</i></p> <p><i>It has been considered if so called "put up or shut up"-rules should be incorporated in Swedish law but this is currently not an option available for a Target company.</i></p> <p><u>Bidder</u></p> <p><i>The public announcement of a bid shall only be made once the Bidder has presented a formal and substantiated bid. So called pre-announcements to the public, informing of indicative bids or possible takeover interest, are not permitted. However, if the Bidder knows or suspects that information regarding a pending bid has been leaked, the Bidder may choose to make a public announcement, a so called "leakage announcement" to even out the possible information discrepancy. It must be clear that the leakage announcement is not a formal announcement that a bid has been made, and the Bidder shall consult with the Swedish Securities Council (Sw. Aktiemarknadsnämnden) before making such announcement.</i></p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<p><u>Bidder and Target</u></p> <p>There are no statutory provisions that oblige a private company to keep a list of persons with access to insider information. <i>However, board members or any other person with access to inside information is still prohibited from conducting transactions in a listed company if the listed company's share price could be affected by the inside information.</i> Directors are not prohibited from trading with shares or similar instruments in the private company but such transactions might, however, trigger a conflict of interest for the directors.</p> <p><i>According to the Market Abuse Regulation (596/2014), publicly listed companies have an obligation to keep a list of all persons (a) being a member of the administrative, management or supervisory bodies of the listed company or (b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or</i></p>

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	<p><i>indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that listed company or (c) a person closely associated with a person qualifying under (a) or (b).</i></p> <p><i>A person included on such a list shall under normal circumstances report all transactions regarding shares or other financial instruments in the company to the Swedish Financial Supervisory Authority (Sw. Finansinspektionen). During a pending (involving a listed company) all persons with access to insider information are prohibited from making any transactions regarding shares or financial instruments in the listed companies.</i></p>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<p>For private transaction, no. Any confidential or not publicly known information is considered only just that and not “insider information”.</p> <p><i>A listed company is also obliged to keep a list of any outside counsel that obtains insider information and persons on such list must confirm their knowledge thereof in writing. The company should in this list include details as to why the outside counsel has been added to the list and specify what inside information the counsel has obtained.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder</u></p> <p>The board should review all relevant aspect of the proposed deal, such as Target's valuation, possible synergies, financial structure, accounts, compliance, employees, ongoing disputes, intellectual property rights. This will be conducted by way of a due diligence. In private companies, the board of the Target will assist and provide information to the data room and answer questions relating to the information provided.</p> <p><i>For listed companies, the Bidder's board will base its review on publicly available information. Any request for information will lead to that information becoming publicly available which may not be in the interest of the Bidder and may alert others potential Bidders that a potential bid is underway.</i></p> <p><u>Target</u></p> <p>The focus of review for the board of the Target is to evaluate the bid and assess the value of the Target and its assets. These evaluations and assessments need to be diligent and shall lead to the board's recommendation to the shareholders.</p> <p><i>The directors of a listed company would normally obtain a fairness</i></p>

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	<p><i>opinion from the Target's financial advisors, for the purpose of getting an objective opinion that the bid satisfactory correlates to the Target's value.</i></p> <p>A fairness opinion is a considerable cost for the Target company and will therefore not normally be used by the board of private companies where there is a limited amount of shareholders.</p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and Target</u></p> <p>Advisable in general and necessary if directors have conflicting interest (see sections 1.3 and 1.4 above).</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>An audit committee is not a statutory requirement for private or for listed companies.</p> <p><i>A general requirement that applies to the Bidder is that a bid must be preceded by adequate preparations, which includes consulting advisors with expertise with Swedish capital market rules. This will include both legal and financial advisors, but there is no express requirement to have an audit committee.</i></p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>The presence of the employee representatives on the board of directors (if any) cannot be limited. As mentioned previously, the board of directors may choose to organise the takeover related work by using a special committee (see 1.3 above) and in that sense it is possible to limit their (and any other board member's) participation to the board meetings.</p> <p><i>If the Bidder is bound by a collective bargaining agreement ("CBA") in Sweden, the Bidder is normally required to carry out consultations regarding the offer with the union(s) with which the company is bound by the CBA. Such consultations must be carried out before the Bidder formally decides to make the offer. If the Bidder fails to carry out such consultations or initiates them too late (i.e. when a decision has already been reached), the Bidder may become liable for damages towards the union(s). The Bidder may request that the unions treat the information confidentially. As a general rule, the Target is not obligated to carry out any consultations with the unions regarding the Bidder's offer.</i></p> <p>For private companies, and if the Target's parent company is bound by a CBA, the same company is also normally required to carry out consultations with its unions before deciding on whether or not the offer should be accepted.</p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p>The employee representatives are subject to the same confidentiality rules and routines as regular board members (see</p>

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	2.4 above).
3.5 Independent expert <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and/or Target</u></p> <p>Regarding need for special committees please see section 1.4 above and section 3.1 regarding fairness opinions.</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder</u></p> <p>The board of directors of the Bidder need to approve the transaction. If the takeover will entail significant changes in the company and its business in a manner that will require a change to the company's articles of associations, an extraordinary general meeting of shareholders will also be needed.</p> <p><u>Target</u></p> <p>The shareholders of the Target are the ones approving the transaction but the board of directors are responsible for making a recommendation to the shareholder whether or not to accept the bid based on the value of the company, in the opinion of the directors.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The board and its directors shall assess whether there directors have any conflicting interests in the transaction, and if so such directors shall not participate or vote in meetings regarding the transaction. See more under section 1.2 above</p>
<ul style="list-style-type: none"> Vis-à-vis executives 	<p>The board will need to assess whether there are any executives with conflicting interests whose participation should be considered during the takeover period. In contrast to the board's directors and the managing director, other executives are not prohibited by law to handle matters in which they have conflicting interest.</p>
<p>4.3 Publicity</p>	<p>For private companies, publicity will be handled by the Target's and Bidder's board of directors in their sole discretion.</p> <p><i>Listed companies are however obliged to inform the public once a formal offer has been made. Listed companies will already have media channels and routines for public announcements. See more under section 2.2 and 2.3 above.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>The board of directors will need to motivate the transactions to their shareholders. The Bidder will motivate the transactions by describing synergies and business improvements that will result from the takeover. <i>When the Target is a listed company, this will be</i></p>

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	<p><i>described in the offer which is made publicly available.</i></p> <p>The Target's board of directors will need to include its motivation for the transaction and assessment of the bid in its recommendation to the shareholders.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p><i>The Board should be closely involved and may consider to</i></p> <ul style="list-style-type: none"> <i>Receive regular information (setting up of a watch program) in order to better understand the activists' strategy, their nuisance level and their requests;</i> <i>Watch the market/shareholders reactions;</i> <i>Analyse the activists' requests against the company's corporate interests and the consistency of the company pre-defined strategy; and</i> <i>Review the level of leeway for finding a balanced compromise.</i>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>Communication to the public is optional for private companies but normally be coordinated between the Bidder and the Target.</p> <p><i>Listed companies must make any formal offer/bid publicly available without delay. Listed companies will also often have a strategic communication plan, which is usually prepared by a PR agency.</i></p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>For companies with employees in a labour union, duties post transaction will involve cooperating with the unions to implement and ensure commitments made.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Duties following the close of a takeover transaction will include implementing routines etc. to benefit from synergies etc. that were presented to the shareholders as motivations for the takeover. The board's duties will remain to its shareholders although being new shareholders after the takeover.</p>

SWITZERLAND

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In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those that are mandatory appear in **bold** below). However, soft law is developing rapidly and more recommendations are being put forward to entice boards to take a more proactive role when facing strategic transactions.

Developments *in italics* refer to listed companies only.

Topic / Board's role	Switzerland
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In connection with transactions, the Board of the Target gets involved in the following situations:</p> <ul style="list-style-type: none"> • Asset deal; • Merger (absorption or combination): In an arm's-length transaction, the governing bodies of both merging entities determine and negotiate the value of their entities and the share conversion ratio to be set forth in a merger agreement and negotiate and enter into the merger agreement; • Restrictions on the transferability of shares: The articles of association may stipulate that registered shares may be transferred only with the consent of the company, what usually means with the consent of the Board. The principle of restrictions on the transferability of shares is applicable to private companies as well as to <i>listed companies</i>. However, with listed companies there is only a very limited number of reasons for a restriction of the transferability; • <i>In relation to a Public Tender Offer, in the majority of cases, the Bidder contacts a potential Target Company (Board of the Target Company) prior to launching a formal Tender Offer. Following the launch of a formal Tender Offer, the Board of the Target Company is involved in the formal process (see Section 3.5 and 4.1 below);</i> • In case the Board suspects that the company could be subject to a bid, the Board should implement a process in order to (i) observe key factors, <i>e.g. valuation of the company shares, evolution of movements and/or market prices of the company's shares</i>, (ii) <i>keep track of analysts' publications</i>, (iii) <i>prevent insider dealings</i>, (iv) <i>alert the internal and external expert teams to be involved in a takeover process</i>, (v) <i>make sure that the formal</i>

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	<p><i>requirements of a formal Tender Offer process will be complied with by the company and its group companies from day 1 on, and (vi) keep close and regular contact with principal shareholders;</i></p> <ul style="list-style-type: none"> • <i>The Board should also have an up-to-date tender offer handbook in place which may, among others, outline a defence strategy in case the company is subject to unfriendly or aggressive takeover.</i> <p><u>Bidder</u></p> <p>Under Swiss Law, the Board is responsible for the ultimate management and representation of the company. Its core duty is to determine the corporate strategy and allocate corporate resources. Any decision regarding the future strategy of the company is within the authority of the Board; hence also the decision regarding a potential strategic transaction of the Company as a Bidder.</p> <p>As a result, the Board should be involved as soon as possible to ensure that a potential transaction is in line with the strategy of the company. The Board should review:</p> <ul style="list-style-type: none"> • whether the transaction matches the aim of the company's strategy; • which alternatives have been examined in order to illustrate that the best option has been chosen; • whether the transaction is in line with the interest of the company and its stakeholders.
1.2 How to cover confidentiality issues within the board	<p><u>Bidder and Target</u></p> <p>(a) Obligation to keep Sensitive Information Strictly Confidential (corporate law provisions)</p> <p>Under Article 717 para. 1 CO, the Board members and third parties engaged in managing the company's business are under a broad general obligation to keep any Sensitive Information concerning the company strictly confidential and to not share any of such Sensitive Information with any third parties, including shareholders of the Company. The term "Sensitive Information" is thereby not limited to business secrets and/or Sensitive Insider Information, but it encompasses - in a very broad sense - any and all information relating to the respective company that is not publicly available and the disclosure of which to a shareholder or to a third party could potentially harm the company.</p> <p>(b) Criminal Rules for the Protection of Business Secrets</p>

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	<p>Besides the corporate law provision submitting the Board under a duty of confidentiality with regard to any Sensitive Information, there is an additional criminally sanctioned protection for manufacturing and trade secrets under Article 162 of the Swiss Criminal Code. Under this provision, the providing of manufacturing and trade secrets (such as manufacturing formulas and designs, lists of clients and suppliers, price calculation formulas, etc.) may be criminally sentenced, irrespective of whether the receiver would make any use of such secrets.</p> <p>(c) <i>Special Rules for the Protection of Sensitive Insider Information</i></p> <p><i>If Sensitive Information to be shared with third parties, including shareholders of the company, contains any confidential information the disclosure of which is deemed to substantially influence the stock exchange price of the shares of the company (so called "Sensitive Insider Information"), then the following special provisions set forth in the Swiss Financial Market Infrastructure Act ("FMIA") are to be considered:</i></p> <ul style="list-style-type: none"> • <i>Article 154 FMIA: The Board may become criminally liable if Sensitive Insider Information is shared or disclosed to another person if they gain a pecuniary advantage for themselves or for another person;</i> • <i>Article 142 FMIA: This provision prohibits the mere disclosure of Sensitive Insider Information by the Board irrespective of whether or not there is an intention for the Board that another could make use of such information to achieve an economic advantage or benefit. Therefore, any person who has insider information and who knows or should know that it is Sensitive Insider Information, behaves illegal, when he or she discloses such information to another person, unless he or she can rely on one of the very limited exceptions provided for by the FMIA.</i> <p><i>Even though a breach of this statutory provision is not criminally sanctioned, the Swiss Financial Market Supervisory Authority FINMA may impose various sanctions, such as, e.g., the issue of a declaratory order that there was a breach of the relevant insider regulation and the disgorgement of profits that may have been achieved as a result of the disclosure of Sensitive Insider Information.</i></p>

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	Regarding the ad hoc publicity, see Section 2.3.
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>Various measures can be put in place:</p> <ul style="list-style-type: none"> • Having internal rules (in particular to manage confidentiality issues, <i>protection of Sensitive Insider Information</i> and conflicts of interests); • Preparation of an agenda and guidelines (accurate planning of meetings, monitoring of the communication policy) (see also Section 6.1); • Setting up of specific M&A-committees on a permanent basis or ad hoc (composed of independent directors) which are able to work and meet with more flexibility and frequency than a full Board (see Section 1.4). <p>If the Board wants to comply with its leadership responsibility, the Board should ensure that it is available at all time, even on weekends, once a take-over scenario emerges. Therefore, it is advisable that the Board delegates the delegable tasks to a special M&A-committee (see Section 1.4) or to the management. Particularly, tasks that are time-critical (e.g. ad-hoc publication);</p> <ul style="list-style-type: none"> • Planning the interaction with the company's management; • Accurate recording of the considerations, documenting a consistent and proper process review and justifying any decisions taken and choices made.
<p>1.4 Need for Special committee(s)?</p>	<p>In general, the company is not obliged to designate an M&A-committee on a permanent basis or ad hoc. However, it is part of best practice in bigger companies and particularly in listed companies to set up such a special committee even if there are no identified conflicts of interests.</p> <p>The M&A committee would generally be responsible for the preliminary examination and valuation of major investments (notably acquisitions) and divestments as well as for monitoring the process and, where appropriate, assistance and support of the executive board in the preparation and possibly in the negotiations of the transaction documents and the related financing. The committee must report to the Board on their activities and findings. The overall responsibility for the duties delegated to the committee however remains with the Board.</p> <p>The audit committee (in charge of financial issues) may also be usefully involved (see also Section 3.3).</p>

Topic / Board's role	Switzerland
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p> <p>Normally, the Board will be involved on the strategy reviews but less likely to be proactively involved during preliminary talks due to confidentiality issues (see Section 3 below).</p> <p><u>Target</u></p> <p>The preliminary contact of the Board may be difficult to avoid, if the Bidder wishes:</p> <ul style="list-style-type: none"> • to get access to a data room before any binding obligations, in order to assess its own valuation of the Target and its forecasts regarding future synergies; • to ascertain that the Target will cooperate, in case of antitrust issues; • to get exclusivity from the Target company; • to mitigate the risk that the Board does solicit alternative offers from third parties; or • to get a commitment of the Board early in the process.
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p><u>Bidder and Target</u></p> <p>YES. Board members are primary insiders and the Board has the obligation to keep Sensitive Information strictly confidential (see section 1.2 above). The Chairman of the Board should regularly remind this requirement and draw the attention of Board members on the sensitive nature of information transmitted.</p> <p>Board members have the duty to review the protective measures which the management has put in place (e.g. NDA, limitation of involved and informed persons, code names, etc.).</p> <p><i>However, according to the SIX Listing Rules, Board of directors of listed companies must make sure that they inform the market without delay of any price-sensitive facts within the sphere of their activities not already publicly known, as soon as they become aware of the main elements of any such price-sensitive facts. Under exceptional circumstances only, such disclosure may be postponed, namely if the price-sensitive facts in question (i) are based on a plan or decision of the issuing company and (ii) the disclosure of which would potentially adversely affect the legitimate interests of the issuing company. As an example, a planned M&A transaction or merger of the issuing company qualifies as such a fact which</i></p>

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	<p>would justify a postponement of an ad hoc disclosure. Therefore, it is advisable to have a specific sub-committee composed of independent directors put in place in order to examine any proposed transaction and follow narrowly each step of preliminary talks and take a view as to whether disclosure should occur or whether protection of legitimate interests justifies to post-pone disclosure (see also Section 2.3).</p> <p><u>Target</u></p> <p>If the Board of the Target Company decides to enter into discussions, it must ensure strict confidentiality both externally, by respective agreement with the Bidder and internally, to avoid an obligation to immediately disclose Sensitive Insider Information under the SIX Listing Rules (ad hoc publicity).</p> <p>In addition, and in particular in the event the Board of the Target Company allows a due diligence review by the Bidder, appropriate measures must be taken to avoid insider dealings and any other disclosure of confidential information of the company of any third parties (such as the counterparties to any contracts to be disclosed).</p>
2.3 What to do in case of leakage or rumours in the press?	<p><u>Bidder and Target</u></p> <p>In the event of a (potential) leakage of Sensitive Insider Information, the Board must make sure that the market is immediately informed in compliance with the relevant ad hoc publicity rules.</p> <p>In order to meet such duty, it is inevitable that clear regulations and processes are put in place in advance, with a clear description of the process on how to proceed in case of a leakage.</p>
2.4 Prevention of insider dealing	<u>Bidder and Target</u>
<ul style="list-style-type: none"> Vis-à-vis board members themselves 	<p>Members of the Board are by law “primary insiders”. The Board should take measures to prevent insider-trading offences and regulate the principles governing ad hoc publicity in greater detail.</p> <p>In particular, the Board should ensure, that appropriate action (e.g. “close periods”) is taken during critical periods, e.g. in connection with acquisition projects, before media conferences or prior to announcing corporate figures.</p>
<ul style="list-style-type: none"> Vis-à-vis other individuals potentially involved 	<p>This is a primary duty of the management. However, the Board has an overall responsibility to ensure that appropriate measures have been put in place by the management.</p>
3. Review of the terms of the transaction	
3.1 Principle and scope of review	<u>Bidder and Target</u>

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	<p>Consistent with its responsibility, the Board should bring a strategic perspective to its review of proposed transactions that rise to the Board-level. The Board should review the financial, economical, strategic and social aspects of the proposed transaction (synergies, impact on financial structure and accounts, impact on employment, impact on IP rights, execution risks, etc.).</p> <p><u>Bidder</u></p> <p>The Board should carefully probe the financial underpinnings of the proposed acquisitions, which may be premised on unrealistic assumptions about cost-savings and growth. Furthermore, the Board should be aware of the main reasons why transactions do not achieve their anticipated results, including:</p> <ul style="list-style-type: none"> • overpayment of target; • an incomplete understanding of the business (including its liabilities and IPs being acquired); • cultural clashes; • failure in integrating the acquired business. <p>Furthermore, the Board should discuss the main findings stemming from the due diligence with the management and how the risks identified are being addressed (key management retention, potential impact on customers, off balance sheet commitments, environmental risks, material litigations, etc.). The Board should also ensure:</p> <ul style="list-style-type: none"> • that the terms of the acquisition agreement adequately cover the risks identified in the DD; • a secured path to closing; and • that reasonable integration and retention plans are prepared.
3.2 Appointment of an ad hoc committee	<p><u>Bidder and/Target</u></p> <p>In case an ad hoc M&A-committee is appointed (see Sections 1.3 and 1.4 above), it should have its own external advisors and a corresponding budget.</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>The Board may seek advice from the audit committee in evaluating issues in M&A transactions. The Board may ask the audit committee to evaluate and express an opinion on the quality of the financial statements and financial reporting of both companies,</p>

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	including their accounting policies. Furthermore, the audit committee might check the following issues: Do the financial assumptions and economic impact justify the price? What are the other potential implications on the company's cost of capital or on the balance sheet? What are the implications of a possible change of accounting standards and/or accounting policies?
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>In Switzerland, employees generally do not have to be represented on the Board of the respective company and a Work Council, as other European countries used to know, does not commonly exist.</p> <p>However, there are a few exceptions regarding privatised companies (performance of public functions by a private company). In such constellations, the employees of the company shall be represented on the Board in an appropriate way. This is for example the case for the Swiss Federal Railway company (SBB) or the Swiss Post as well as the Swiss telecommunications company.</p> <p><u>Note:</u> Generally Switzerland's employment law is widely considered as flexible and investor-friendly compared with the laws of other European jurisdictions.</p> <p>In case of an asset deal or statutory merger or demerger, not, however, in case of a share deal, protective rules apply to the transfer of an enterprise and its employees. In such cases, the Board or the management must inform and possibly consult the organisation that represents the employees or, where there is none, the employees themselves in due time before the transfer takes place on the reason for the transfer and its legal, economic and social consequences for the employees.</p>
<ul style="list-style-type: none"> • How to ensure confidentiality? 	<p>The organisation that represents the employees or the employees themselves must be bound into a confidentiality undertaking if at the time of the information and possible consultation process the transaction is still of a confidential nature. In practice, this, however, often leads to the proposed transaction to be officially disclosed prior or in parallel to the employee information and consultation process.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p><u>Bidder and/or Target</u></p> <p>The Board may obtain independent advice from external experts on important business matters. In general, external opinion of an independent expert helps the Board to better assess and possibly limit its risks regarding potential conflict of interests and potential liabilities. However, an independent expert advice that is followed by the Board, does not exclude a potential liability of the Board members in case of a resulting damage to the company, to its shareholders or to third parties.</p>

Topic / Board's role	Switzerland
	<p><i>In case of a public tender offer, the Board of the Target Company must issue a Board Report to the shareholders stating its position on the Tender Offer. In preparing the Board Report, the Board may seek independent advice and particularly base its assessment on a fairness opinion rendered by a qualified independent valuation expert (such as investment banks, corporate finance advisors or audit companies) pre-approved by the Takeover Board.</i></p> <p><i>The Takeover Board ascertains that a company is suitably qualified to provide fairness opinions in public takeover offers in the sense of Article 30 par. 6 Takeover Ordinance (Übernahmeverordnung).</i></p> <p><i>In the context of a public tender offer relating to so-called illiquid securities, the fair market value of such securities must be determined by an independent expert to be appointed by the bidder.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Target</u></p> <p><i>In case of a public tender offer, the Board of the Target must issue a Board report to the shareholders stating its position on the tender offer. The Board report has to be correct and complete and must contain all information necessary to allow all shareholders of the Target to make an informed decision as to the acceptance or refusal of the tender offer. This means in particular the following:</i></p> <ul style="list-style-type: none"> • <i>objective examination of the tender offer, in particular as to whether the intended takeover is advantageous for the Target, the shareholders at large and other stakeholders and whether the offer price seems appropriate and fair;</i> • <i>disclosure of the intentions of significant shareholders (that is, shareholders owning more than 3% of the Target's voting rights), to the extent that the Board has knowledge thereof;</i> • <i>disclosure of the conflicts of interest (see Section 4.2);</i> • <i>indication of the consequences the tender offer will have for the individual members of the Board of the Target and for the senior management, also in relation to the remuneration they receive upon continuing or terminating their activities;</i> • <i>publication of any information relevant to the shareholders of the Target;</i> • <i>indication of defence measures, if such are planned;</i> • <i>issuance of a recommendation or rejection or mere enumeration of the advantages and disadvantages (without</i>

Topic / Board's role	Switzerland
	<p><i>recommendation) of the tender offer, each time with comprehensible analysis of the substantial considerations; disclosure of the number of votes cast for and against the Board's position.</i></p> <p>The articles of association may stipulate that registered shares may be transferred only with the consent of the company. In this case, a Board approval is necessary. (see also Section 1.1)</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members 	<p><u>Bidder and Target</u></p> <p>The Swiss Code of Best Practice for Corporate Governance recommends that:</p> <ul style="list-style-type: none"> • If a conflict of interest arises, the concerned member of the Board must inform the chairman of the Board. The chairman, or vice chairman, should request a decision by the Board commensurate with the seriousness of the conflict of interest. The Board should decide without the participation of the party concerned; • Anyone who has interests conflicting with those of the company or is obligated to represent such interests on behalf of third parties should not participate in the decision-making. Anyone who has a permanent conflict of interest must not be a member of the Board or the executive board; • Transactions between the company and members of corporate bodies or related persons should be carried out "at arm's length" and should be approved without the participation of the party concerned. If necessary, a fairness opinion should be obtained. <p><i>With regard to Tender Offers, the Board of the Target Company must disclose in the Board Report to the shareholders (see Section 3.5 and 4.1 above) any conflicts of interests of the members of the Board of the Target Company and of the senior management, if any and inform on the measures taken to deal with such conflicts of interest (such as, e.g. abstention of the conflicted members or the obtaining of a fairness opinion).</i></p>
<ul style="list-style-type: none"> • Vis-à-vis executives 	Same for directors
<p>4.3 Publicity</p>	<p>See above Section 2.3.</p> <p><i>Bidder and Target should ensure that appropriate measures (for internal and external communication) are in place.</i></p>
<p>4.4 Merits</p>	<p><u>Bidder and Target</u></p> <p>Boards' decision should be motivated to cover the items listed in</p>

Topic / Board's role	Switzerland
	Section 3.1.
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Any listed company</u></p> <p><i>Preparation for activists' attacks is part of a listed company's good practice. Main defense tools for the Board include:</i></p> <ul style="list-style-type: none"> • <i>Committed and consistent Board communication: (i) as a preventive measure, a company should make its view on (self-)identified points of attack known to its shareholders and explain the Board's strategy; (ii) during an attack, it is absolutely key that a determined Board explains its strategy and directly engages with the shareholders and the media;</i> • <i>Dialogue: a regular engagement and dialogue with significant shareholders and proxy advisors; such proxy advisors (ISS, Glass Lewis; Ethos, Swipra, etc.) play an important role in the context of hedge fund activism in the Swiss market;</i> • <i>Task-force: a stand-by task-force coordinating the preventive and defense measures; with members of management as well as in-house and outside specialists on investor relations / communication, finance, and legal;</i> • <i>Monitoring: continuous monitoring and assessment of the shareholder base and potential activist investors.</i> <p><i>If approached by an activist and before deciding on any permissible defense measures, a Board is generally well-advised to first listen open-mindedly, understand the activist's analysis and, thereafter, possibly engage in a constructive dialogue.</i></p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p><u>Bidder and Target</u></p> <p>The Board may be well advised to appoint a PR-agency which advises and supports companies in conjunction with the external and internal communication of transactions and integration. Ideally, comprehensive communication planning should be conducted parallel to the transaction planning. Basic instruments are:</p> <ul style="list-style-type: none"> • Strategy and position in the event of a leak; • Strategy and messaging on the strategic value of the transaction; • Scenario planning; • Q&A for the anticipated question of stakeholders and analysts;

Topic / Board's role	Switzerland
	<ul style="list-style-type: none"> • Training the managers to communicate effectively with analysts, investors, the media and employees; • Communication plan, from the announcement to finalising the deal; • Communication strategy and plan for the integration.
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Ascertain that commitments (including vis-à-vis Target employees) are complied with.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Board should also ascertain that reasonable integration and retention plans are prepared (see Section 3.1).</p>

UK

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Topic / Board's role	UK
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>The board should get involved as soon as it becomes aware of a potential bid. Under the Companies Act 2006, directors have a statutory duty to promote the success of the company. As such the board should proactively engage with the situation as soon as it becomes aware of a bid.</p> <p><i>The UK's City Code on Takeovers (the "Code"), which regulates the conduct of takeovers in the UK, provides that as soon as a board becomes aware of a possible bid (irrespective of whether this occurs before or during an offer) it must not: (i) deny shareholders the opportunity to decide on the merits of the offer, (ii) take steps which could be seen as frustrating towards the bidder and/or the offer, or (iii) enter into or carry out certain corporate transactions identified in the Code.</i></p> <p><u>Bidder</u></p> <p>The UK Corporate Governance Code (the "Corporate Governance Code")⁶⁴ provides that the board is responsible for determining the nature and extent of the principal risks the company is willing to take in achieving its strategic objectives.</p> <p>Bearing this in mind the board should seek to play an active role from the outset, and assess the bid in the context of the overall strategic objectives of the company.</p> <p><u>Target and Bidder</u></p> <p><i>Under the Listing Rules⁶⁵, all companies with a Premium Listing of equity shares in the UK engaging in a "Class 1" transaction are required to:</i></p> <ul style="list-style-type: none"> • <i>notify a "Regulatory Information Service" of the proposed transaction;</i> • <i>issue an explanatory circular to shareholders (known as</i>

⁶⁴ The UK Corporate Governance Code (September 2014) sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders. The Code is published by the Financial Reporting Council. All companies with a Premium Listing of equity shares in the UK are required under the Listing Rules to report on how they have applied the Code in their annual report and accounts.

⁶⁵ The Listing Rules are a set of rules published by the UK Financial Conduct Authority (the "FCA") and contained in the Listing Rules sourcebook which is part of the FCA Handbook. They apply to all companies with securities admitted to listing on the UK Financial Conduct Authority's "Official List".

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	<p><i>a Class 1 circular); and</i></p> <ul style="list-style-type: none"> <i>obtain shareholder approval prior to the transaction.</i> <p><i>A “Class 1” transaction is effectively any significant transaction undertaken by a listed company.</i></p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p><u>Secrecy</u></p> <p><i>Secrecy is a fundamental requirement of the Code. Before the announcement of an offer or impending offer is published under the Code, all persons privy to confidential information must treat that information as secret. All persons privy to confidential information concerning an offer or possible offer must conduct themselves in such a way as to minimise the chances of a leak of the information (for example, by using code names, ensuring that confidential information is only passed to another person on a need to know basis and that the recipient is made aware of the need for secrecy).</i></p> <p><i>The Takeover Panel (the “Panel”)⁶⁶ must be consulted before a total of more than six external parties (for example, shareholders, providers of finance (debt and equity) or pension fund trustees) are approached in relation to the proposed transaction.</i></p> <p><i>The Code requires that the bidder [and target] should keep track of all persons who have been given confidential information by maintaining an “insider list”.⁶⁷</i></p> <p><u>Conflicts of interests</u></p> <p>Under the Companies Act 2006, a director must not put himself in a position where his personal interests can or may conflict with the interests of the company. This is particularly relevant in the context of takeovers.</p> <p><u>Disclosure of conflicts</u></p> <p>There is also a duty under the Companies Act 2006 to declare interests in proposed transactions or arrangements with the company.</p> <p>Where a potential conflict exists, the director may still participate in board meetings provided that he has disclosed the matter and has been authorised to contribute notwithstanding his conflicted position.</p>

⁶⁶ The Panel is the body responsible for overseeing the implementation and operation of the Code.

⁶⁷ The requirement to produce insider lists, and the form and content of these lists, will be governed by the Market Abuse Regulation (EU) No 596/2014 (the “MAR Regulation”) with effect from 3 July 2016 (see further details below).

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	<p>However, depending on the circumstances it may be more appropriate to exclude the director from all deliberations and decision making (please see 1.4 below for further details).</p> <p>A director who fails to declare an interest in an existing transaction or arrangement with the company commits a criminal offence (section 183 Companies Act 2006).</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p><u>Delegation</u></p> <p>It is commonplace to delegate to sub-committees. However directors cannot absolve themselves of their responsibility by delegating their duties.</p> <p><i>Furthermore, where the Code applies, any delegation must be considered in light of the responsibly statement that all directors must give (see further below).</i></p> <p><i>Responsibility statement</i></p> <p><i>The Code provides that every document, announcement or other information published must be accompanied by a statement that the directors of the bidder (and where relevant the target) accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief ((having taken all reasonable care to ensure that such is the case) the information contained in the document or advertisement is in accordance with the facts and does not omit anything likely to affect the import of such information.</i></p> <p><i>Therefore, where delegation occurs, any directors outside of a relevant sub-committee must be able to satisfy themselves that the persons to whom supervision has been delegated are competent to carry out the task.</i></p>
<p>1.4 Need for Special committee(s)?</p>	<p><u>Bidder and Target</u></p> <p>Where a conflict of interest arises, it is advisable to establish a committee of independent directors to deal with matters relating to the offer and any potential competing offer and ultimately to decide whether to recommend an offer to the company's shareholders.</p> <p>Conflicted directors should not take part in the deliberations of the independent committee concerning the offer or have access to the advice it receives; however they will still be required to join with the other directors in taking responsibility for information published and provided by the company in connection with any offer (<i>see 1.3 above</i>), other than any recommendation made by the independent committee, and they continue to be bound by <i>their</i></p>

Topic / Board's role	UK
	<i>general obligations under the Code</i> and their statutory and general duties as directors.
2. Preliminary contacts at top management level	<u>Bidder and Target</u>
2.1 Does the board get involved proactively?	Given that the UK has unitary boards, both non-executive directors and the top level management will be proactively involved.
2.2 Is there a duty to ensure protection of confidential data?	<u>Bidder and Target.</u> <i>Yes.</i> <i>Secrecy is a fundamental principle under the Code. Please see 2.1 above.</i> <i>The Criminal Justice Act 1993 contains specific criminal offences for insider trading where an individual who knowingly has insider information: (i) deals in related securities on the basis of the information, or (ii) encourages another person to deal in such securities, or (iii) passes insider information to another person other than in the proper performance of his office.</i> <i>The Financial Services and Markets Act 2000 ("FSMA") also contains specific civil offences for disclosure of insider information, including: (i) Insider dealing, (ii) Improper disclosure, and (iii) Improper dissemination.⁶⁸</i> For private companies, directors' statutory duties under the Companies Act 2006 encompass a duty to protect confidential information.
2.3 What to do in case of leakage or rumours in the press?	<u>Bidder and Target</u> <i>Under the Code, following a possible leak of information relating to an offer or potential offer the Panel may require a public announcement to be made by the bidder or the target to rectify any selective disclosure.</i> <ul style="list-style-type: none"> • <i>Before an "Approach"⁶⁹ the obligation to monitor the situation and make a leak announcement lies with the Bidder and its financial adviser.</i> • <i>The Bidder should monitor market news regarding the Target and the Target's share price for signs of untoward movement and the bidder should ensure that the Panel is consulted at the "appropriate stage".</i>

⁶⁸ Note that the civil offences under FSMA are due to be replaced by the MAR Regulations (although the substance of the offences remain the same). The MAR Regulations introduce three specific offences: (i) insider dealing (including inducing insider dealing), (ii) unlawful disclosure (of inside information), and (iii) market manipulation.

⁶⁹ An "Approach" is broadly defined in the Code. It is likely to arise if a director or representative is informed of a possible offer.

Topic / Board's role	UK
	<ul style="list-style-type: none"> • <i>After an “Approach” the obligation to monitor the situation and make any announcement shifts to the Target.</i>
2.4 Prevention of insider dealing	<u>Bidder and Target</u>
<ul style="list-style-type: none"> • Vis-à-vis board members themselves 	<p>Please see 1.2 above on secrecy and conflicts of interests.</p> <p>Please also see 2.2 above for relevant criminal and civil offences.</p>
<ul style="list-style-type: none"> • Vis-à-vis other individuals potentially involved 	<p><i>The Panel must be consulted before a total of more than six external parties (for example, shareholders, providers of finance (debt and equity) or pension fund trustees) are approached in relation to the proposed transaction.</i></p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>The directors of the Bidder and the Target should consider the bid in the context of their general duties under the Companies Act 2006, which include a duty to:</p> <ul style="list-style-type: none"> • act within powers, • promote the success of the company, • exercise independent judgment, • exercise reasonable care, skill and diligence. <p>Such duties require directors to consider:</p> <ul style="list-style-type: none"> • the likely consequences of the bid; • the interests of the company's employees; • the need to foster the company's business relationships with suppliers, customers and others; • the impact of the company's operations on the community and the environment; • the desirability of the company maintaining a reputation for high standards of business conduct; and • the need to act fairly as between the members of the company. <p><u>Target</u></p>

Topic / Board's role	UK
	<p><i>In a takeover situation, there is an accepted view that the duty to promote the success of the company translates into a duty to have regard to the long-term, and that directors can therefore reject a bid at a premium to the pre-bid share price if they believe the transaction will destroy value in the longer term or that the premium does not reflect the fundamental value of the company.</i></p>
<p>3.2 Appointment of an ad hoc committee</p>	<p><u>Bidder and Target</u></p> <p>Please see 1.4 above.</p>
<p>3.3 Role of the audit committee (optional except for listed companies and financial institutions)</p>	<p><u>Bidder and Target</u></p> <p>The functions and duties of the audit committee are governed by the UK Financial Conduct Authority (“FCA”) Handbook (DTR 7 Audit Committees), and also the Corporate Governance Code.</p> <p>Although there is no specific obligation on, or recommendation for, an audit committee to independently consider the merits of a bid, it must invariably consider the bid in the course of discharging its duties to monitor the financial reporting process and the statutory audit of the company, and the effectiveness of the company’s internal risk management systems.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>There is no requirement for an employee representative on the board and to date it is very unusual.</p> <p><u>Target</u></p> <p><i>Under the Code, as soon as a firm offer is announced, the board must make the announcement readily available to its employee representatives (or to employees generally if there are no representatives) and inform them of the right to provide an opinion on the effects of the offer on employment.</i></p> <p><i>The board must also make the offer document readily available to its employee representatives (or to employees generally if there are no representatives) at the time of publication.</i></p>
<ul style="list-style-type: none"> How to ensure confidentiality? 	<p><i>An employee representative who is privy to confidential insider information is amenable to the provisions of The Criminal Justice Act 1993 and The Financial Services and Markets Act 2000 (please see 2.2 above).</i></p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> Ad hoc committee Role 	<p><u>Bidder and Target</u></p> <p>Please see 1.4 above.</p> <p><u>Target</u></p>

Topic / Board's role	UK
	<p><i>Rule 3 of the Code stipulates that the board of the Target must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders.</i></p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p><u>Bidder and Target</u></p> <p>Requires approval of the board. Please see 1.1 above.</p> <p><u>Target</u></p> <p><i>Rule 25.1 of the Code stipulates that the board must send a circular to its shareholders following the publication of the offer document. The board must also make the circular readily available to its employees (please see 3.4 above), and, where relevant, to the trustees of its pension scheme(s).</i></p> <p><i>Rule 25.2 of the Code stipulates that the board is required to advise shareholders of their opinion on any firm offer, including any alternative offers. The Code does not limit the factors that the board may take into account in giving its opinion on an offer. In particular, the board is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors it considers relevant.</i></p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>See 1.2 above.</p>
<p>4.3 Publicity</p>	<p><u>Bidder and Target</u></p> <p>Both the Bidder and the Target should ensure that only a limited number of individuals are authorised to deal with the press.</p> <p><i>Spokespersons should be fully familiar with the contents of General Principles 1 (all holders of securities of the target company of the same class be treated equally.) and 2 (false markets must not be created in the securities of the target company), and Rules 19 (Standard of Care; Statements of intention; Unacceptable Statements; Telephone Campaigns; and Interviews and Debates) and 20 (Equality of information to Shareholders) of the Code.</i></p> <p><i>In particular, spokespersons should ensure that:</i></p> <ul style="list-style-type: none"> • <i>new information is not given in individual discussions, but only by a public release of information.</i>

Topic / Board's role	UK
	<ul style="list-style-type: none"> • <i>their statements are accurate.</i> • <i>they do not speak about future profits, company prospects or asset values.</i> • <i>they do not comment on the likelihood of any revision or extension of an offer before this has been announced.</i> • <i>meetings with shareholders, analysts, brokers etc. only take place in the presence of the company's financial adviser.</i> <p><i>Furthermore, the Financial Services Act 2012 creates an offence for making misleading statements. Section 89 provides that it is an offence for any person to: (i) make a statement which he knows to be false or misleading in a material respect, (ii) recklessly make a statement which is false or misleading in a is, or (iii) dishonestly conceal any material facts whether in connection with a statement made by him or otherwise.</i></p>
4.4 Merits	<p><u>Bidder and Target</u></p> <p>The merits of a bid should be considered in the context of directors' general and statutory duties under the Companies Act 2006.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p><u>Bidder and Target</u></p> <p>Please see 4.3 above (Publicity)</p> <p>The Board should:</p> <ul style="list-style-type: none"> • Ensure that any information or impression given to shareholders is verifiably accurate and not misleading in any respect (including by omission). • Not give any information that is price-sensitive or any material relevant new information that has not already been disclosed. <p><u>Bidder</u></p> <p><i>General Principle 1 of the Code requires that all holders of securities of the target company of the same class be treated equally.</i></p> <p><i>It follows therefore that, under the Code, the Bidder, or anyone acting in concert with the Bidder, is not permitted to agree a special deal with favourable conditions with some of the</i></p>

Topic / Board's role	UK
	<i>shareholders of the target company that is not extended to all shareholders, except with the consent of the Panel.</i>
6. Communication 6.1 Communication Plan	<u>Bidder and Target</u> Both the Bidder and the Target should ensure that only a limited number of individuals are authorised to deal with the press. Senior executives who are not required to speak to the press should be informed of the arrangements in place and should refer questions to the appointed spokesperson(s).
7. Duties post transaction 7.1 Vis-à-vis employees	<u>Bidder</u> Under the Code, in an offer document, a Bidder must state its intentions with regard to the Target's employees. Such statements will be binding on the Bidder for 12 months from the end of the offer period.
7.2 Vis-à-vis company	

URUGUAY

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In Uruguay, soft law is not thoroughly developed. However, reference is made herein to the Latin-American Code for Corporate Governance published by the *Corporación Andina de Fomento* and recommended by the *Uruguayan National Chamber of Commerce and Services* (hereinafter, the “**Corporate Governance Code**”)⁷⁰. In addition, we have also consulted specialized scholarly opinions regarding these matters and included the predominant positions in the answers provided herein.

Topic / Board's role	Uruguay
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p>In Uruguay, regarding both the target and the bidder, the Board's involvement takes place as from the initial stages of the transaction. Though this is not specially stipulated in the Uruguayan Companies Act (hereinafter, the “UCA”), the Board is the one that gets actively involved in defining the company's strategic position, its projections for the future, growth perspectives, etc.</p> <p>It should be noted that in Uruguay, an important part of the local business activity is carried out by small, family-owned companies, that frequently take advantage of corporate forms in order to limit the owners' liability. Therefore, corporations are generally owned by a small, identified group of individuals; it is frequent for corporations to be owned directly or indirectly by the same individuals, or by members of a same family group. As a consequence of this, the ownership and the management of the corporation will most probably coincide, and thus, the shareholders' interests and those of the Board will very rarely differ. This has an impact in the division of roles, since from a practical standpoint the decisions are taken by the same group of individuals, and there rarely are clear boundaries in the involvement of the corporate bodies in the decision-making process.</p> <p>However, there are certain provisions in UCA that illustrate the need of the Board's involvement at the initial stages of the transaction. For instance, a special balance sheet of the companies willing to merge needs to be prepared before the formal merger decision is adopted, which is undertaken at the Board's initiative. Also, the merger needs to be preceded by a merger commitment which shall be granted by the Board and put to consideration of the Shareholder's Meeting. Said commitment must have the basics of the agreement, including the clauses of the by-laws of the company to be created or amended for the acquiring company, among other aspects.</p>

⁷⁰ The Corporate Governance Code is available at: http://publicaciones.caf.com/media/25389/lineamientos_codigo_latinoamericano.pdf

Topic / Board's role	Uruguay
	<p>Generally, this merger commitment providing the general terms for the transaction will be drafted by request of the Board and perused by the same, prior to being submitted before the General Shareholders' Meeting for its approval.</p> <p>Moreover, since the Board of Directors is the one in charge of calling the General Shareholders' Meeting, it has a lead role in driving the merger's process of approval.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p>Although the UCA does not provide an express duty of preserving the confidentiality of the information known by Board members as a result of their tasks in relation to the company in which they have been appointed, it is understood that this obligation is implied in the general obligations borne by Board members to carry out their tasks with all due diligence and loyalty.</p> <p>The business judgment rule is on a de facto basis applicable in order to determine whether a member of the Board has performed its fiduciary duties diligently as per UCA provisions. In application of the business judgment rule, Board members may be liable for revealing any sensitive and material information known to them by virtue of their position within the company.</p> <p>Hence, this would constitute a breach to the duty of loyalty.</p> <p>In the context of M&A transactions, where Board members of the companies involved may have access to sensitive information regarding their counterparties, the scope of said obligation may be understood to comprise the information revealed by both the Bidder and the Target company, since it may influence the outcome of the transaction as a whole.</p> <p>Notwithstanding the existence of the implied duty of loyalty discussed above, it may be convenient for companies to enter into Non-Disclosure Agreements ("NDAs"), in which the terms of their liability may be set forth more clearly and thus prevent possible evidentiary difficulties that could arise if a NDA did not exist. In this regard, the NDAs may include monetary sanctions in the form of fines for breaches of the duty of confidentiality.</p>
<p>1.3 How to organise the board's involvement?</p>	<p>The Board's involvement in a strategic transaction depends on the manner in which the company is organized. For instance, though it is not compulsory, some companies may have an Executive Committee in charge of the company's ordinary activities and performing as a micro Board for the same, hence they may get involved in contacting the target/bidder, drafting the merger commitment, etc. Said Executive Committee would be ordinarily constituted by members of the Board, but will meet with the frequency needed to conduct the transaction and fulfill its different stages efficiently. An Executive Committee may be created either by the company's bylaws or by the Board itself, and will be under</p>

Topic / Board's role	Uruguay
	<p>the Board's watch.</p> <p>Regarding the way in which either the Board or the Executive Committee organize themselves, the UCA is flexible and refers the matter to self-regulation, allowing them to proceed in the way they deem appropriate (e.g. increased frequency of meetings, elaborating a schedule, recording deliberations, etc.), within the limits established by the bylaws, if these were to exist.</p> <p>The Corporate Governance Code recommends to elaborate internal rules in order to increase the efficacy of the Board's functioning⁷¹. According to said guideline, it is necessary to establish the way in which the Board should function (frequency of meetings, proceedings, etc.), being that it is understood that between 6 and 12 yearly meetings are reasonable, depending on the complexity of the inner structure and the activities of the company.</p>
<p>1.4 Need for Special committee(s)?</p>	<p>There is no need to appoint a Special Committee. However, as indicated above, the UCA allows the Board to appoint an Executive Committee to handle the ordinary business of the company in the way the Board (or the by-laws, if it were the case) establishes.</p> <p>In accordance with the Corporate Governance Code, the Special Committees are to be construed as extensions of the Board, and not as separate managerial bodies⁷².</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p>Yes, as indicated above (1.1), the Board gets involved proactively and undertakes the approach towards the target or bidder, as the case may be. The negotiations happen at the Board's level, and only once they have a formal proposal the matter is submitted for the shareholders' approval. At this point it is important to emphasize that the General Shareholders' Meeting can only be called by the Board's initiative, and they cannot be self-summoned.</p>
<p>2.2 Is there a duty to ensure protection of confidential data?</p>	<p>As stated above (please refer to 1.2), despite the fact that the UCA does not impose a specific duty to ensure protection of confidential data, said duty is implicitly contained in the broader concept of fiduciary duties that the Board members are subject to. Moreover, it is also possible for Board members to be subject to NDAs, as described above.</p> <p>Notwithstanding the above, pursuant to section 5 of the <i>Securities Market Act</i>, N° 18.627 (hereinafter, the "SMA") and the rules issued by the Central Bank of Uruguay ("CBU") in this regard, listed companies (meaning companies whose shares are listed or that issued notes through a public offering) are under the obligation</p>

⁷¹ Corporate Governance Code, page 88.

⁷² Corporate Governance Code, page 91.

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	<p>of providing the CBU with exact information regarding any relevant aspects that may affect their financial or economic situation. Under section 245 of the <i>Complication of Rules for the Securities Market</i> issued by the CBU, these relevant circumstances expressly include mergers, spin offs, transformations or dissolution. In light of this, in the context of transactions involving listed companies, once the decision to undergo any of these operations is duly adopted by the competent corporate bodies, said decision needs to be reported to the CBU for the market's knowledge.</p>
<p>2.3 What to do in case of leakage or rumours in the press?</p>	<p>In case of leakage or rumours in the press, the company may file a suit against the Director(s) in order to hold them liable for the damages caused, and claim a monetary compensation (including consequential damages). The predominant position among scholars is that the nature of this claim is for contractual liability, since the relationship between the Board members and the company bears this nature.</p> <p>Also, the Board may call for a Shareholders' Meeting in order to consider the removal of the Director who breached his duty of loyalty. Finally, if a NDA was executed, then, the measures provided therein shall be adopted.</p>
<p>2.4 Prevention of insider dealing</p> <ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p>The SMA provides the framework for prevention of insider trading involving listed companies.</p> <p>In this regard, section 6 provides that the disclosure of privileged information or the use of privileged information in an agent's favor may be penalized by the CBU, with a range of sanctions from a mere observation or a warning to fines.</p> <p>As per the SMA, the term <i>privileged information</i> includes any information regarding a listed company or its securities that becomes known to a person due to its position, which information has not become public and that could influence the price of the securities, their derivatives, or any transaction involving these securities.</p> <p>Moreover, section 82 of the SMA provides an express duty of loyalty of Board members of entities performing public offerings of securities. It prohibits certain species of insider trading, such as using commercial opportunities that became known to the Board member on occasion of the performance of his activities as Director, damaging the company.</p> <p>Regarding the duty of loyalty provided by section 82, even though this obligation is expressly provided for Board members of listed companies, scholars have understood that due to its generality it may be applied also to closed companies.</p>

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	Other than the aforementioned, there are no further statutory or administrative regulations tending to prevent insider dealing.
3. Review of the terms of the transaction 3.1 Principle and scope of review	<p>The Board is in charge of reviewing the terms of the proposed deal as well as the main findings stemming from the due diligence, and must assess the opportunities and risks of the possible transaction. The detailed review and work is done at the Board's level, and they are intensely involved in the decision making. However, in order to conclude the operation, the Shareholders' approval is mandatory.</p>
3.2 Appointment of an ad hoc committee	<p>The appointment of an ad-hoc committee is not compulsory; however, it might be recommendable to attenuate possible conflicts of interests within the Board. Unless the by-laws mandate otherwise, the Board is entitled to appoint ad-hoc committees for treatment of a specific issue, such as an M&A transaction, or for dealing with the daily administration tasks relating to the ordinary course of business of the company. In practice, instead of appointing an ad-hoc committee, the Board is usually assisted by the CEO, in-house or external lawyers and accountants.</p>
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p>The Audit Committee is optional except for listed companies, where it is mandatory. It may be created either by the by-laws or by decision of shareholders representing no less than 20% of the paid-in capital.</p> <p>Regarding the Audit Committee's role within a transaction, and despite its regular tasks and duties, it must pronounce itself on the projects of by-laws' modification, issuance of debentures, transformation, mergers, capital increase or decrease, spin-offs, anticipated dissolution, all matters that must be submitted to it. Once the Audit Committee has studied the situation, it must present a report with its financial, legal and commercial considerations of the transaction.</p>
3.4 Employee representatives (if any on the board) <ul style="list-style-type: none"> • Can their presence be limited? • How to ensure confidentiality? 	<p>In Uruguay, unless it is so stated in the by-laws, there are no employee representatives in the Board. In practice, this is rare.</p>
3.5 Independent expert <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p>It is not mandatory to hire an Independent Expert, although it may be recommendable where there is a potential conflict of interest. The Independent Expert's recommendations are not binding to the Board nor to the Shareholders, and following its advice does not limit the Board's risks in terms of liability.</p>

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	<p>In this regard, the Corporate Governance Code provides that it is convenient for the company's by-laws to provide Board members with a right to request for expert assistance, in case of particularly complex matters.⁷³</p>
<p>4. Board's decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p>The approval of the transaction is not a decision to be taken by the Board, since under the UCA the approval of the transaction is given to the Shareholders by way of an Extraordinary General Meeting. However, since the Board is the one able to call a Shareholders' Meeting, to define its agenda and to establish what matters are submitted to the shareholders' decision, in practice the Board's previous green light is needed. As we have advanced, the participation of the shareholders at this stage is usually (as per our experience) no more than a formal approval of the terms of the transaction, that have been already elaborated by the Board.</p>
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p>Under Section 387 of the UCA, all Board members that may have personal interests in contradiction with those of the company regarding a particular matter, are under an obligation to disclose this circumstance before the Board and the Internal Audit Committee, should this exist. Board members that present conflicts of interests are forbidden by the UCA to intervene in the decision making process regarding those particular matters, being that they may be subject to liability for the damages caused should they behave otherwise.</p> <p>In accordance with the Corporate Governance Code, the process of appointment of Board members of listed companies should include an obligation of making a public statement of their independence, which must be approved by the Board.⁷⁴</p> <p>On the other hand, there are no specific provisions within Uruguayan laws in this regard regarding executives other than members of the Board, being that their own duties shall be subjected to each company's policies, where applicable.</p>
<p>4.3 Publicity</p>	<p>We make reference to non-mandatory publicity, which will depend on the private understanding of the companies involved in the transaction.</p> <p>Notwithstanding the above, listed companies are required to report to the CBU "relevant facts" that may affect the price of the securities quoted in stock exchanges.</p>
<p>4.4 Merits</p>	<p>Though the duty to motivate the Board's decision is not established by the UCA, the Board's decisions should be motivated in order to</p>

⁷³ Corporate Governance Code, p. 70.

⁷⁴ Corporate Governance Code, p. 66.

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	<p>fulfill the Board members' duties of due diligence and loyalty.</p> <p>The Board's acts will be assessed under the business judgment rule and thus, they must be able to demonstrate that the decisions were made in accordance with the standard of a reasonable business person in order to avoid liability in this regard.</p>
<p>5. Shareholders' activism</p> <p>5.1 Board's implication</p>	<p>As already mentioned (1.1), in Uruguay most companies are family-owned and there are currently very few listed companies; thus, there is hardly any place for shareholder's activism, since most corporate decisions are adopted by the same group of individuals.</p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p>The communication of a transaction depends on what the companies have privately agreed, notwithstanding the need for administrative approval of any merger that implied an amendment of the by-laws. However, in case of listed companies or financial institutions registered before the Central Bank of Uruguay, an official communication must be sent to the Central Bank of Uruguay and to the National Audit Office.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	N/A
<p>7.2 Vis-à-vis company</p>	N/A

USA

Damien Zoubek

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In most cases, there are no legally/mandatory obligations/duties that are borne by board members (those that are mandatory appear in **bold** below). However, this isn't true in the United States. There are legal duties of the Board.

Developments *in italics* do not refer to listed companies only.

Topic / Board's role	USA
<p>1. Preparation of the transaction</p> <p>1.1 When should the board get involved?</p>	<p><u>Target</u></p> <p>In the US, the ultimate decision to engage in a material strategic transaction, such as a sale of a company, rests with the Board and not Management. In that regard, any substantive discussions about a significant strategic transaction should involve the supervision, direction and oversight of the Board in some fashion. Accordingly, the Board should be involved in any such transaction at the outset.</p> <p>In the US, the most common approach to a Target is through the most senior executive officer, which is typically the CEO. M&A discussions rarely channel through non-executive Board members. Once a Target has been approached in a substantive way, the CEO would brief the Board and the Board would determine whether Management should pursue discussions or not. The nature of those Board decisions will depend upon a number of factors, including how serious the proposal to the Target is and whether the Board believes that pursuing a transaction would be in the best interests of the Target and its stockholders relative to the other alternatives available to Target at the time (including remaining independent). The Board will also make a number of tactical and fiduciary duty based decisions regarding the nature of the response, such as whether to engage at all, whether and how to negotiate price, whether to solicit interest from other potentially interested parties, and so on. The Board would then authorize and instruct Management and Target's advisors, who would be responsible for engaging in any discussions with Bidder.</p> <p><u>Bidder</u></p> <p>Under US law, the Board is responsible for the supervision and oversight of the Bidder's business strategy, including acquisition and other transaction strategy. However, how involved the Board of the Bidder would be in a potential transaction would depend significantly on how large the acquisition target is relative to the Bidder. For very large companies that are serial acquirers, the Board may delegate authority to Management for approving</p>

Topic / Board's role	USA
	<p>transactions under a certain size. For larger transactions, transactions that would involve a new line of business or transactions that would result in a fundamental change, the Board would generally be consulted in advance for a proposal is made to a Target.</p>
<p>1.2 How to cover confidentiality issues within the board</p>	<p><u>Bidder and Target</u></p> <p>Generally speaking, the fiduciary duties of directors include a duty to keep company information confidential. Some companies will require directors to execute confidentiality agreements, but many do not and instead rely on the general fiduciary duties of directors that require them to safeguard and hold in confidence the confidential information of the company on whose Board they sit.</p> <p>In addition, the US federal securities laws generally impose liability if a director were to trade on material non public information of a company on whose Board he or she sit, or if another person received and traded on material non public information from such a director.</p>
<p>1.3 How to organise the board's involvement?</p>	<p><u>Bidder and Target</u></p> <p>There is no single blueprint for how Boards should conduct themselves in evaluating and pursuing strategic transactions. However, fiduciary duties do require Boards to exercise due care in evaluating any strategic transaction, and that requires Boards to hold regular meetings, have regular updates, receive adequate and timely information, receive advice from Management and experts (to the extent the Board believes an expert is necessary to assist), deliberate with each other, understand the key terms of material legal agreements and otherwise be adequately informed and engage in a careful deliberative process.</p> <p>How Boards organize that process will be situation specific depending upon the nature of the transaction. For example, Targets in sell-side situations would reasonably be expected to engage in a more rigorous decision making process due to the significance of the transaction as opposed to, say, a Bidder that is a routine acquirer that is making a cash acquisition of a moderate size in the ordinary course of business.</p> <p>As to how to organize the Board process, the most common questions that come up in this situation, especially when advising sell-side Targets, are (1) whether the Board should form a committee to manage the process and (2) whether Board members that are also part of Management are permitted to participate in Board discussions.</p> <p>As it relates to the formation of a committee, that is addressed in response to Question 1.4 below.</p>

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	<p>As it relates to the role of Board members who are also members of Management, there is no legal requirement to exclude such individual(s) from Board deliberations absent a conflict of interest; but if there is a conflict of interest, such individual(s) should be excluded to protect independence of decision-making and to avoid claims of self-dealing.</p> <p>Finally, it is good practice for Boards to engage in regular executive sessions in connection with important meetings (typically at or near the end of the meeting). Those sessions generally exclude non-legal advisors and Management (although internal counsel can sometimes remain).</p>
<p>1.4 Need for Special committee(s)?</p>	<p>There are generally two types of committees that Boards will form in connection with a strategic transaction: (1) committees for efficiency and (2) committees to manage or address conflicts.</p> <p><i>Efficiency Committee:</i> In certain cases, the time and attention necessary from the Board in connection with managing a strategic transaction process is so great that not all Board members have the time available to commit to that effort and/or the process will require a number of smaller (but still significant) decisions by the Board in real time such that convening the full Board on short notice is likely to be administratively difficult. In these situations, it is not uncommon for Boards to create a "Transaction Committee" involving a sub-set of directors to provide more of the day-to-day oversight of a transaction process, reserving authority over more material decisions (e.g., approval of price) to the full Board.</p> <p><i>Conflicts Committee:</i></p> <p>The duty of loyalty requires directors to act in the best interests of the company on whose Board they sit, as opposed to their own personal interests. In certain situations, directors will have disabling conflicts that require them to be recused from the deliberations of a particular matter, so as to avoid any real or perceived influence of those personal interests over the deliberations of the Board. Boards can effect this recusal either by excusing the director or directors who have that conflict from those meetings of the Board relating to the transaction, or by creating a committee of independent directors. In order for a committee to be effective, it must be given the appropriate level of authority of decision-making over a particular matter and be able to retain its own advisors and experts if it so chooses, and it must not be dominated by insiders "behind the scenes".</p>
<p>2. Preliminary contacts at top management level</p> <p>2.1 Does the board get involved proactively?</p>	<p><u>Bidder</u></p>

Topic / Board's role	USA
	<p>It is rare for individual directors to be involved in the discussions, negotiations, etc. of a strategic transaction, other than through participation in Board meetings.</p> <p><u>Target</u></p> <p>It is also rare for individual directors to be involved in the discussions, negotiations, etc. of a strategic transaction, other than through participation in Board (or Committee) meetings. However, there can be situations where, due to a conflict, an individual director (most likely the Chair or Lead Independent Director) would have a more direct role.</p>
2.2 Is there a duty to ensure protection of confidential data?	See response to 1.2 above.
2.3 What to do in case of leakage or rumours in the press?	<p><u>Bidder and Target</u></p> <p>With limited exceptions, companies are permitted to issue a “No comment” in response to leaks or market rumour. More specifically, there is no legal obligation in the US for either company to comment on leaks or rumours regarding M&A discussions unless (1) that company is the source of the leak, (2) the company is trading in its securities or (3) the company has made an incorrect public statement with respect to that matter (in which case there is an obligation to correct a material misstatement).</p> <p><i>Source of Leak:</i> Companies in the US are permitted to refrain from comment (i.e., say either “No comment” or “The Company does not comment on market speculation” or some similar statement) in response to leaks or rumours. However, if the company is the source of the leak, then that can be construed under the disclosure laws as being an affirmative public statement to the market, which cannot contain material misstatements or omissions. As it is difficult in many cases to conclusively identify the source of any market leak or rumour, this is rarely the reason for a company to confirm M&A discussions.</p> <p><i>Buying/Trading Stock:</i> If a company is buying or selling its own securities, then it cannot do so while in possession of material non-public information. If the strategic transaction is material, then a company cannot trade in its securities while those discussions are ongoing, unless the existence and material facts of those discussions are disclosed publicly. This would be implicated were the company considering a stock offering while in the midst of substantive discussions regarding a material transaction, or were engaged in stock buyback activity. In such a case, the company would need to either suspend or delay its trading activity in its stock or, alternatively, suspend the discussions regarding a</p>

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	<p>transaction. If either of those is not possible or practical, the company would be required to make public disclosure of its M&A discussions.</p> <p><i>Incorrect Prior Statement:</i> If a company has made a public statement that is no longer correct, then it has an obligation to correct that misstatement. An example that has occurred in the past is that Management in response to a leak makes a public statement (instead of simply saying “No comment”), that the company is not for sale and is not engaging in transaction discussions. If that statement is incorrect, then the company has a duty to correct it, and the company would be forced to issue a corrective disclosure that confirms that discussions are occurring. It is for this reason that companies try to avoid investor presentations and the like if transaction discussions are ongoing, as Management may be forced to answer questions about M&A activity that they cannot avoid, which may then force them to disclose more than they would prefer to disclose under the circumstances.</p> <p>There are situations where companies are not legally required to confirm M&A discussions, but decide to do so for other reasons. For example, if there is significant speculation in the market and the company's stock is experiencing significant volatility, the company may conclude that the speculation in the market is no longer tenable and that it should confirm the M&A discussions in order to provide clarity to the market.</p>
2.4 Prevention of insider dealing	<u>Bidder and Target</u>
<ul style="list-style-type: none"> • Vis-à-vis board members themselves • Vis-à-vis other individuals potentially involved 	<p>As mentioned in response to Question 1.2 above, directors (and others receiving information from them) are prohibited from trading while in possession of material non public information, and material transaction discussions can constitute material non public information. Companies generally have policies that restrict the same, and many companies will issue a trading blackout when material transaction discussions have progressed beyond a certain point.</p> <p>See above.</p>
<p>3. Review of the terms of the transaction</p> <p>3.1 Principle and scope of review</p>	<p><u>Bidder and Target</u></p> <p>In exercising the duty of care, the Board of each of Bidder and Target should understand the material terms of the transaction, including the key terms of the relevant transaction documents. That will include an understanding of the structure and consideration of the transaction, and any associated tax and</p>

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	<p>accounting implications. The Boards will want to understand the key closing conditions to the transaction and the allocation of risk as it relates to closing certainty. The Boards will want to understand termination rights, and the consequences (if any) of a termination under various scenarios (e.g., break-up fees). The Boards will generally not be too concerned about representations and warranties and operating covenants, unless there is a specific issue that warranted significant discussion in the negotiations, instead trusting that management and the advisors were able to negotiate reps/warranties/covenants that are customary and appropriate in light of the industry, specific business and anticipated time period between signing and closing.</p> <p>In a public company acquisitions/sale/merger, the Boards of both companies will need to understand the “deal protection” provisions that address the limitations on Target soliciting competing proposals, and the rights and obligations of both parties if a competing proposal is made.</p> <p>Finally, management and the advisors should bring to the Board's attention any other key terms that would be material to its assessment of the transaction. For example, if there are significant regulatory hurdles in getting to completion, the Board should review the terms of the agreement that address regulatory conditions and the covenants on the part of each of Bidder and Target to obtain them. Or, if the transaction is subject to financing, reviewing with the Boards the terms of the financing commitments (if obtained), and the terms of the agreement that address financing contingencies.</p>
3.2 Appointment of an ad hoc committee	Please see 1.4 above.
3.3 Role of the audit committee (optional except for listed companies and financial institutions)	<p><u>Bidder and Target</u></p> <p>In the US, it is not common for the audit committee to serve any unique or special function in negotiating a strategic transaction, other than its ordinary course review of accounting and financial statement matters.</p>
<p>3.4 Employee representatives (if any on the board)</p> <ul style="list-style-type: none"> • Can their presence be limited? 	<p><u>Bidder and Target</u></p> <p>In the US, it is not common for employees to have a specific representative on the Board (although there are limited instances, such as in the airline industry). Accordingly, it is not common to have to address these dynamics in advising Boards contemplating a strategic transaction. However, were the situation to arise, each director would still be a full participating Board member (with duties in most states running to the company and its stockholders generally, and not to the employees or any other non-stockholder interests), unless there was a conflict of interest that warranted recusal.</p>

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<ul style="list-style-type: none"> • How to ensure confidentiality? 	<p>All directors are subject to an obligation of confidentiality as part of their fiduciary duties generally.</p>
<p>3.5 Independent expert</p> <ul style="list-style-type: none"> • Ad hoc committee • Role 	<p>The concept of advisor (and, in particular, financial advisor) “independence” has received significant attention in the US of late, and chapters could be written about the case law developments and resulting practice developments on this topic. The most cursory summary would be that Boards should assess the relationships that their financial advisor has (or has had) with both the company itself and the counterparty in order for the Board to assess whether those relationships would reasonably be expected to impair the advice given by that advisor to the Board and the company. Simply because an advisor has worked for the counterparty in the past is not necessarily a fact that would disqualify an advisor, and each situation is specific depending on the nature of the relationships and the specific facts and circumstances of the transaction. The self-interest of the advisor itself (for example, the interest of the advisor in also providing financing for the transaction) is also fundamentally relevant.</p> <p>As to the question of whether the Board needs its “own” advisors, separate and apart from those of the company, that would depend upon the situation. In a situation without a conflict of interest that requires a Board committee or other process to address the conflict, it would not be common for the Board to retain its own advisors (and there is no legal requirement to do so). In that case, advisors to “the company” would be expected to similarly advise the Board, and the Board’s interests should be aligned with that of the company and the stockholders as a whole.</p> <p>However, if there is (for example) a committee established for conflict purposes, then that committee might retain its own advisors. A classic example is a controlling shareholder take private, where a controlling shareholder of a public company is buying in the public minority. In that situation, the case law in Delaware would provide for business judgment rule protection for the Board only if there was a fully functioning special committee with the authority to retain its own advisors and to disapprove the transaction if in its judgment appropriate.</p>
<p>4. Board’s decision</p> <p>4.1 Approval of opinion on the transaction</p>	<p>Please see 1.1 and 3.1 above.</p> <p>In all cases, the Board’s reasoning for approving a transaction will be reflected in the Board minutes for the meeting(s) in which the transaction was discussed.</p> <p>As to whether the Board is required to publish its reasoning, that will depend upon whether the company is required to submit the transaction to a shareholder vote (or if the company’s shareholders</p>

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	are being asked to tender their shares into a tender offer). In that case, SEC rules will require the Board to make a recommendation to the stockholders of the company, and to disclose the Board's reasoning for making such a recommendation.
<p>4.2 On conflicts of interests</p> <ul style="list-style-type: none"> • Vis-à-vis board members • Vis-à-vis executives 	<p><u>Bidder and Target</u></p> <p>Directors and required to disclose actual or potential conflicts of interest to each other, so that the Board can be informed and deliberate on the conflict and what (if any) measures are to be taken to address the conflict. Not every conflict is disabling, and a director may continue (depending upon the circumstances) to be able to participate in Board meetings even if he or she has a potential conflict of interest (such as an immaterial conflict). However, it is the Board's responsibility and authority to assess director conflicts (with the assistance of legal counsel) and make the determination as to what action (if any) is to be taken.</p> <p>Generally the same as for directors. However, it goes without saying that the interests of executives can be different from that of directors. Notwithstanding, the law is the same. Directors are obligated to be aware of potential conflicts and take any appropriate action to address them.</p>
4.3 Publicity	<i>Bidder and Target should ensure that an appropriate plan (for internal and external com) is in place. In the US, publicity and PR/IR is really a management responsibility, with Board oversight as with anything else.</i>
4.4 Merits	
<p>5. Shareholders'activism</p> <p>5.1 Board's implication</p>	<p>The level of Board involvement in an activism situation will depend upon the level of activist activity and the agenda and goals of the activist. Management tends to be the first line of communication with investors, including activist investors. However, Boards should periodically receive updates from management and advisors as to activism generally and in the company's specific industry. Boards should proactively review the company's performance and governance to identify areas of potential weakness where activists might focus, and take affirmative steps (if appropriate) to address them or be prepared to defend them.</p> <p>If an activist comes into the company's stock, Boards should be regularly updated on communications with the activist, investor and public relations matters, market reaction and strategy for response. As a situation escalates, the Board should become more and more involved, especially to the extent the company takes specific actions in response to an activist agenda (e.g., return of capital). In the US, it is common to see a "settlement" with an activist, and any settlement agreement would need to be approved by the Board.</p>

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	<p>Whether individual Board members are involved in direct communications with activist investors will depend on the circumstances. In many cases, that is not necessary. However, there are situations where, for example, management is under attack by an activist, and a non-executive Chairman or Lead Independent Director would be involved in dialogue with the activist investor.</p>
<p>6. Communication</p> <p>6.1 Communication Plan</p>	<p>Investor and public relations in the US are the responsibility of management, and for the most part the Board's involvement will be limited to reviewing any providing input/perspective on key communications materials.</p>
<p>7. Duties post transaction</p> <p>7.1 Vis-à-vis employees</p>	<p><u>Bidder and Target</u></p> <p>Each Board's involvement in these matters will generally be consistent with the Board's ordinary course supervisory function, and there is rarely a unique series of Board activities or actions related to these matters post-transaction.</p> <p>In a sell-side situation, the Target Board would have no further duties on any matters post-closing.</p>
<p>7.2 Vis-à-vis company</p>	<p><u>Bidder and Target</u></p> <p>Same as above.</p>