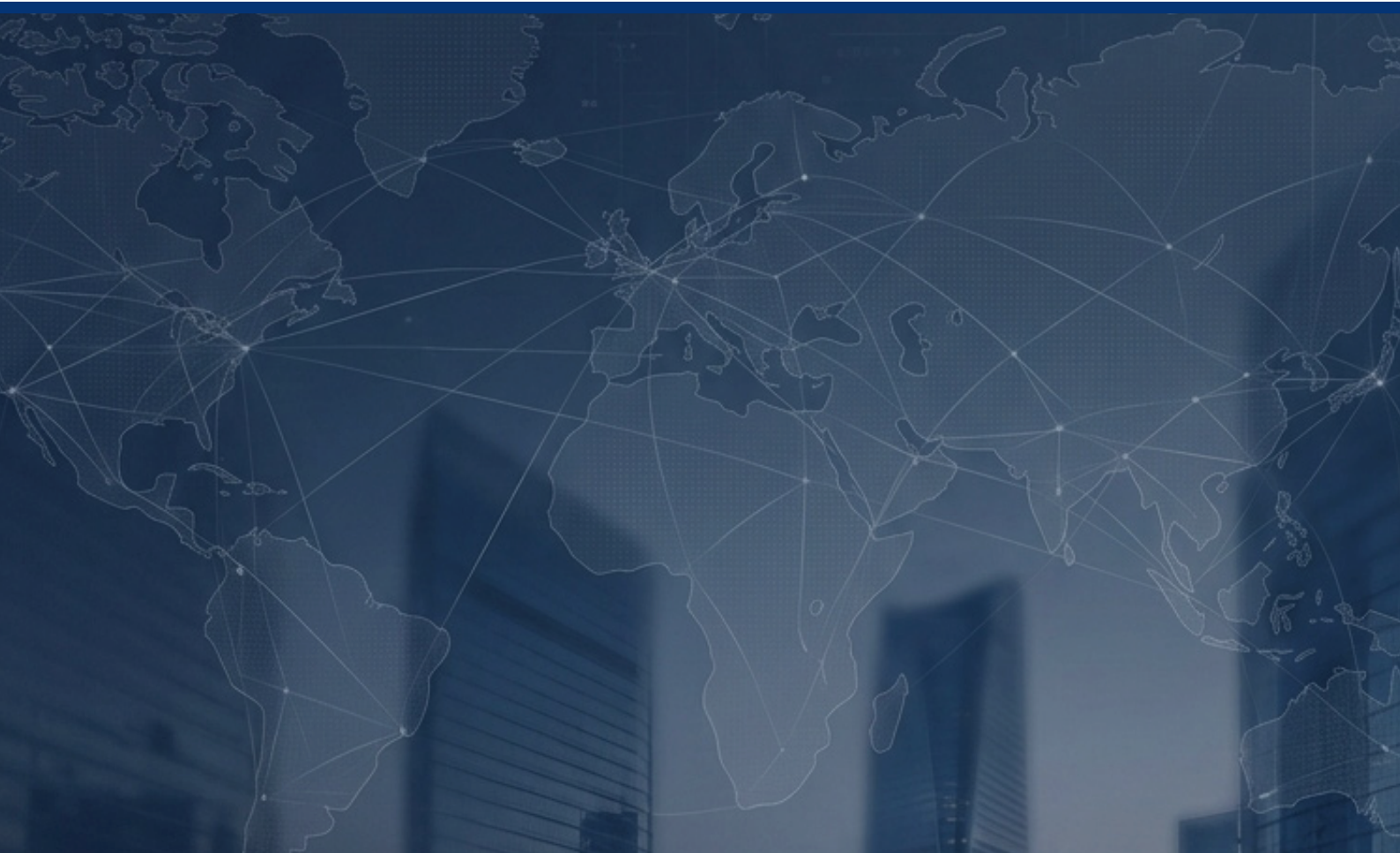




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International Bar Association

Survey on Stake-Building Disclosure and Mandatory Tender Offers 2025



IBA Securities and Capital Markets Committee



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Survey on Stake-building Disclosure and Mandatory Tender Offers 2025 conducted by the IBA Securities and Capital Markets Committee

1 Introduction

The Securities and Capital Markets Committee (SCMC) of the International Bar Association (IBA) is pleased to present the results of its 2025 survey on stake-building disclosure and mandatory tender offers (MTO). The survey covered 33 jurisdictions and was prepared for the session of the SCMC held on 3 November 2025 at the IBA Annual Conference in Toronto titled 'Disclosure rules in stake-building and mandatory tender offers'. The survey was conducted in the form of a questionnaire with responses from the officers of the SCMC.

The following findings are based solely on the responses received from the jurisdictions that participated in the survey. Accordingly, all statements regarding regulatory practices or market approaches reflect only those jurisdictions from which questionnaire data was obtained and should not be interpreted as universally applicable.

Further, the survey results should not be construed as legal advice. The responses were provided during spring/summer 2025 and reflect the state of law in the respective jurisdictions only as of that time.

Many thanks to Selina Seifert, Lenz & Staehelin, for her extensive support in preparing this survey.

Readers are invited to get in touch with the contact person in the list below for specific guidance on stake-building disclosure and MTO requirements.

2 Survey findings

2.1 *Disclosure rules in stake-building*

2.1.1 DISCLOSURE THRESHOLDS AND TIMING OF NOTIFICATIONS

Approximately 69 per cent of the surveyed markets apply an initial disclosure threshold of holdings of five per cent, including jurisdictions such as the United States, Australia and India. However, thresholds are not uniform. Some regimes adopt lower thresholds (eg, three per cent in the United Kingdom), while others start higher (eg, ten per cent in Mexico). Differences also continue beyond the initial threshold. The European Union operates under the Transparency Directive framework, which mandates updates once the initial five per cent threshold is crossed, whenever holdings reach certain predefined levels. These levels typically include ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent, with additional thresholds in place in some EU markets. By contrast, in the UK, once the three per cent threshold has been crossed, notifications are required at every subsequent one per cent threshold. Australia, Japan and South Korea require a new filing whenever the shareholding changes by at least one percentage point from the last disclosed position once the five per cent threshold has been crossed. In the US, following the initial five per cent threshold, a new disclosure is generally triggered when the shareholding changes by at least two percentage points from the last reported level.

Timing requirements are broadly harmonised towards rapid market communication, generally within one to five trading days after a threshold event, often through standardised forms and publication via exchanges, regulators, or the issuer. While differences remain, especially in the degree of formality and the filing destination (shareholder to issuer, directly to regulator, or both), the overall trend clearly favours swift and transparent public disclosure.

2.1.2 INSTRUMENTS COUNTED TOWARDS THRESHOLDS

The scope of instruments counted towards disclosure thresholds varies across the surveyed jurisdictions. Voting shares are effectively universal, as they are included in 97 per cent of the jurisdictions. The treatment of non-voting shares, however, is more fragmented. In 62 per cent of the jurisdictions, non-voting shares are not counted towards disclosure thresholds.

Derivatives that grant a right to acquire shares (such as options or convertible instruments) are typically within scope: 94 per cent of the jurisdictions include them, though some only do so if the acquisition right can be exercised within a defined time period (eg, 60 days in the US).

The treatment of derivative instruments that do not confer a physical acquisition right but provide equivalent economic exposure is more heterogeneous. About 66 per cent of the jurisdictions include such instruments. Many EU jurisdictions include these instruments in their disclosure calculations, whereas several non-EU jurisdictions, including, for example, South Africa, Singapore and Pakistan, do not.

In 88 per cent of the jurisdictions, instruments that grant voting rights but provide no economic benefit (eg, borrowed shares) must be included when determining whether disclosure thresholds have been exceeded.

2.1.3 EVENTS TRIGGERING DISCLOSURE

The acquisition of beneficial ownership triggers a disclosure obligation in 91 per cent of the surveyed jurisdictions. However, it is important to note that the precise definitions of beneficial ownership vary across jurisdictions. In most jurisdictions, the concept is broadly construed to include economic interests as well as the power to direct the voting, holding or disposition of securities (eg, Brazil and Portugal). By contrast, in a few jurisdictions, only the power to direct the voting, holding or disposition of securities are regarded as components of beneficial ownership (eg, Denmark and Sweden).

Another event that gives rise to disclosure obligations in nearly as many jurisdictions (82 per cent) is acting in concert or forming a group in relation to the relevant securities. This concept generally encompasses situations in which two or more persons coordinate to influence or control a company, typically through voting rights, acquisitions, or strategic decision-making. An equally large number of jurisdictions recognise disposals that result in a decrease in holdings as disclosure-triggering events.

In 67 per cent of the surveyed jurisdictions, passive crossings of thresholds are also counted towards disclosure requirements. In some cases, such disclosures are made through periodic filings rather than immediate filings (eg, in the US).

Moreover, securities lending arrangements, short positions and similar structures can trigger disclosure requirements in 64 per cent of the jurisdictions. Other events that may give rise to a disclosure obligation

include succession and gifts, mergers, demergers, liquidations, admissions to trading and the exercise of proxy voting rights.

A further feature common to 80 per cent of the surveyed jurisdictions is the obligation to update or amend previously submitted disclosures when relevant circumstances change. Across jurisdictions, two principal models are mainly used to determine when such updates are required. The first is the one per cent step-change model, under which any increase or decrease of at least one percentage point after the initial filing triggers a new disclosure (eg, Australia, Japan). The second is the fixed-threshold model, whereby an update is required only once the holding reaches, exceeds or falls below the next reportable threshold (eg, many different EU jurisdictions). Variations exist: for example, some jurisdictions apply different step sizes, while others restrict the one per cent updating rule to higher ownership levels. In addition, certain jurisdictions require an update even in the absence of additional acquisitions if the shareholder's intent or purpose changes (eg, Luxembourg).

2.1.4 WHAT DISCLOSURE IS REQUIRED AND WHO DISCLOSES

Across the surveyed jurisdictions, disclosure statements converge on a core set of information designed to enable the market to verify the scale, nature and context of a position. In 94 per cent of the jurisdictions, the filing must specify the percentage of voting rights (and often share capital) held, and in 91 per cent it must identify the number and type of instruments through which the holding is maintained. In 82 per cent of jurisdictions, details of the acquisition that triggered the threshold event, typically the date and price, must be disclosed. A strong emphasis is also placed on identifying concert parties (members of the group) with 85 per cent of the jurisdiction requiring that aspect. By contrast, the source of funds used to acquire the position is generally not required, with only 24 per cent of jurisdictions mandating such disclosure.

Requirements to disclose the purpose or intent of the acquisition vary, with 42 per cent of jurisdictions requiring a statement of purpose. In the US, for example, the reporting person must state the purpose of the acquisition of the issuer's securities and describe any plans or proposals they may have, including, for example, potential further acquisitions or dispositions of the issuer's securities. With respect to agreements, 73 per cent of the jurisdictions require a description of relevant arrangements affecting voting rights, transferability or future acquisitions (eg, shareholder agreements). However, only 39 per cent of the jurisdictions require the submission of the underlying agreements themselves.

Beyond the content of the disclosure, regimes also differ regarding who must submit the notification. In 81 per cent of the surveyed jurisdictions, responsibility rests with both the direct/legal owner and the beneficial owner. There are, however, notable exceptions. In Switzerland, for example, the disclosure obligation generally rests with the beneficial owner, unless the direct owner is authorised to exercise the relevant voting rights at its own discretion.

In 84 per cent of the jurisdictions, parties acting in concert are required to disclose their holdings on an aggregated basis.

The survey further shows that there are generally no broad exemptions from disclosure obligations for specific categories of investors. In particular, in an overwhelming majority of jurisdictions, both asset managers and passive investors are required to disclose their positions, and only a small minority of regimes allow for simplified or short-form disclosures.

2.1.5 SANCTIONS FOR VIOLATIONS OF STAKE DISCLOSURE REQUIREMENTS

Regulatory sanctions are widespread and may include fines, as well as orders or injunctions to correct or cease the breach. In many jurisdictions, voting rights may be suspended or a prohibition imposed on acquiring additional shares or on exercising rights to acquire or dispose of shares until proper disclosure has been made (eg, Switzerland).

A significant number of jurisdictions additionally treat wilful non-compliance or false disclosure as a criminal offence, carrying potential fines or imprisonment (eg, Luxembourg), while others limit sanctions to the administrative sphere. Beyond criminal and regulatory consequences, breaches of reporting obligations may also give rise to civil liability: for example, retail investors may bring civil claims for damages if they have suffered harm as a result of incorrect or incomplete disclosure (eg, Portugal).

Finally, some jurisdictions grant private parties a right to bring enforcement actions alongside regulatory authorities, whereas others centralise enforcement exclusively with the securities regulator or takeover authority.

2.2 *Mandatory tender offer regimes*

The survey confirms that 88 per cent of the surveyed jurisdictions have a formal MTO regime. By contrast, in the US, there are no MTO requirements under federal securities law, which governs voluntary tender offers. While it is possible that MTO obligations could be created under the corporate law of the issuer's jurisdiction of incorporation, this would be highly unusual.

Among jurisdictions with MTO rules, 53 per cent apply an (initial) control threshold of 30 per cent of the voting rights. Many EU Member States apply a 30 per cent threshold, and several non-EU jurisdictions do so as well, including, for example, the People's Republic of China and Nigeria. A significant minority (23 per cent) adopt a 33.3 per cent trigger (eg, Norway), while some jurisdictions set the trigger higher (eg, South Africa at 35 per cent) or lower (eg, New Zealand at 20 per cent).

In 93 per cent of the jurisdictions, the securities counted towards the trigger threshold are voting shares or equity securities, although some jurisdictions also include certain convertible instruments. In 70 per cent of cases, the triggering event is the acquisition of beneficial ownership or control. A minority of jurisdictions also recognise acting in concert or group formation as a trigger and consider passive threshold crossings sufficient to trigger an MTO.

Across systems, exemptions and flexibilities of the MTO obligations are widely available, though structured differently. A common type of exemption is the opting-out or opting-up clause. An opting-out clause removes the obligation to launch an MTO, even when the relevant ownership threshold is exceeded.

An opting-up clause, by contrast, raises the threshold that triggers an MTO, allowing an investor to acquire a larger percentage of shares before a mandatory offer is required.

For example, Switzerland allows an opting-out clause in the issuer's article of association or an opting-up clause raising the threshold to 49 per cent of the voting rights. The Netherlands provides a 30-day grace period during which an investor who has crossed the 30 per cent threshold may reduce the holding below the threshold to avoid an MTO, provided the voting rights are not exercised during that period and the interest is not transferred to a person that can invoke a statutory exemption; The People's Republic of China provides exemptions under its Takeover Code, including exemptions for intra-group share transfers

that do not change control of the listed company, and bail-out restructurings of listed companies in severe financial distress, subject to a three-year lock-up on transfers by the acquiring investor.

These variations reflect how takeover regimes are tailored to balance shareholder protection and equality with market efficiency and transactional flexibility.

2.2.1 CONDITIONS APPLICABLE TO MTO

The survey shows that, in the majority of the surveyed jurisdictions (62 per cent), mandatory tender offers may be made subject to certain conditions. However, the permissibility of such conditions is generally interpreted restrictively and is guided by the principle of equal treatment of shareholders and the need for legal certainty. Conditions that are typically permitted are limited to objective and external factors, such as the receipt of regulatory or antitrust approvals, the absence of a judicial decision prohibiting the offer, compliance with mandatory offer periods or the achievement of a minimum level of acceptance.

By contrast, conditions that are subjective, vague, self-triggering or potentially misleading are generally not allowed. Conditions that otherwise undermine the equal treatment of shareholders are also commonly prohibited across jurisdictions.

2.2.2 PRICING

Across jurisdictions, MTO pricing is calibrated to ensure fairness. The predominant model is a minimum-price rule under which the offer price typically cannot be lower than the highest price paid by the bidder, or any concert party, for the relevant securities within a defined look-back period, most commonly six to 12 months (eg, Hong Kong).

Many regimes overlay a best-price obligation so that any purchase on more favourable terms during the offer period (and, in some systems, for a short period after closing) compels an upward adjustment of the offer price for all shareholders (eg, Denmark).

Cash-only mandates are rare: only 14 per cent of surveyed jurisdictions mandate an all-cash offer. Most systems permit consideration in cash, securities or a combination of both, but require a cash alternative in specified circumstances, for example, where the bidder has made recent cash purchases (eg, South Africa). The prevailing trend thus favours optionality for shareholders.

2.2.3 ENFORCEMENT

Enforcement measures for breaches of MTO obligations are primarily financial. Monetary sanctions may differ between administrative fines or periodic penalty payments accruing per calendar day up to a specified cap.

Many jurisdictions may also impose a suspension of voting rights attached to the relevant shares for as long as the obligation remains unfulfilled (eg, Germany) or may order the divestment of excess shareholdings, requiring the shareholder to sell down to a level below the trigger where compliance is not achieved (eg, Italy).

Criminal liability also exists in some jurisdictions (eg, Japan).

2.2.4 'PUT UP OR SHUT UP' MECHANISM

Within the MTO framework, a significant minority of the surveyed jurisdictions (39 per cent) incorporate a functional 'put up or shut up' mechanism. If no offer is announced, a fixed deadline is typically imposed, often four to six weeks, within which the potential offeror must either announce a firm intention to make an offer or publicly state that no offer will be made (eg, UK and Ireland). If the offeror declares that no offer will be made, or if the deadline expires without a firm intention, the usual consequence is a standstill period during which the offeror is prohibited from crossing control thresholds, generally for a period of around six months (eg, UK and Ireland).

3 Conclusion

The responses reveal several important insights. First, disclosure thresholds are converging around the five per cent level in most jurisdictions. Reportable holdings generally include voting equity as well as instruments that confer or replicate voting rights or economic exposure. Disclosure is typically required upon any crossing of statutory thresholds, whether due to acquisitions, disposals, securities lending, passive crossing of the threshold or aggregation of holdings among parties acting in concert.

Filings usually specify the percentage of equity owned, the number and type of instruments held, details of acquisitions, descriptions of relevant agreements, and the identity of controlled entities and concert parties. However, the requirement to disclose the source of funds, the acquirer's purpose or intent, or to file underlying agreements or arrangements is generally not mandated across the surveyed jurisdictions.

Sanctions for non-compliance can include fines, suspension of voting rights, divestment orders, damages and, in more severe cases, even imprisonment.

The majority of jurisdictions also impose an MTO requirement. MTOs are generally triggered when a specified proportion of voting rights is acquired and are designed to ensure equal treatment of shareholders and safeguard market integrity. Non-compliance with MTO obligations usually results in administrative or corrective measures aimed at restoring compliance and maintaining market certainty. Within this framework, a significant minority of jurisdictions also employ a 'put up or shut up' mechanism. Under this approach, normally a fixed deadline is imposed within which a potential bidder must either announce a firm intention to make an offer or publicly declare that no offer will be made.

We are very grateful to all contributors for their valuable input and collaboration. As the regulatory landscape continues to evolve, we hope that this survey will provide a useful benchmark and stimulate further discussion on best practices and future developments in the field of stake-building and takeover regulation. We hope you enjoy reading it and welcome any questions or comments.

Paris, Toronto, New York, Mumbai and Zurich, 31 December 2025

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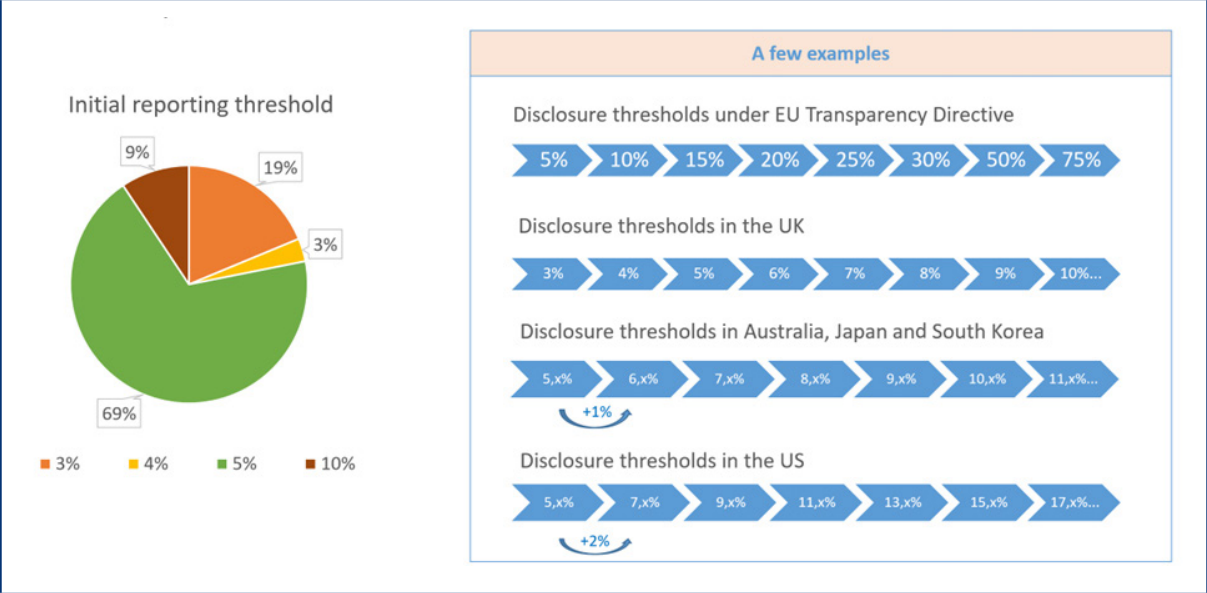
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Denmark	Gorrissen Federspiel Advokatpartnerselskab (Rikke Schiøtt Petersen)
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France	Bredin Prat (Sophie Cornette de Saint Cyr)
Germany	Gleiss Lutz; Hengeler Müller (Michael Arnold; Simon Patrick)
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South Africa	Bowmans (Ryan Wessels; Shmuel Moch; Ari Chipkin)
South Korea	Shin & Kim (Kyung Hwa Moon)
Spain	Uría Menéndez (Gabriel Núñez; Manuel Suero; Rocío MacKinlay; JuanFullana); Gómez-Acebo & Pombo (Augusto Piñel)
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Switzerland	Walder Wyss (Theodor Härtsch); Homburger (Benjamin Leisinger); Lenz & Staehelin (Patrick Schleiffer)

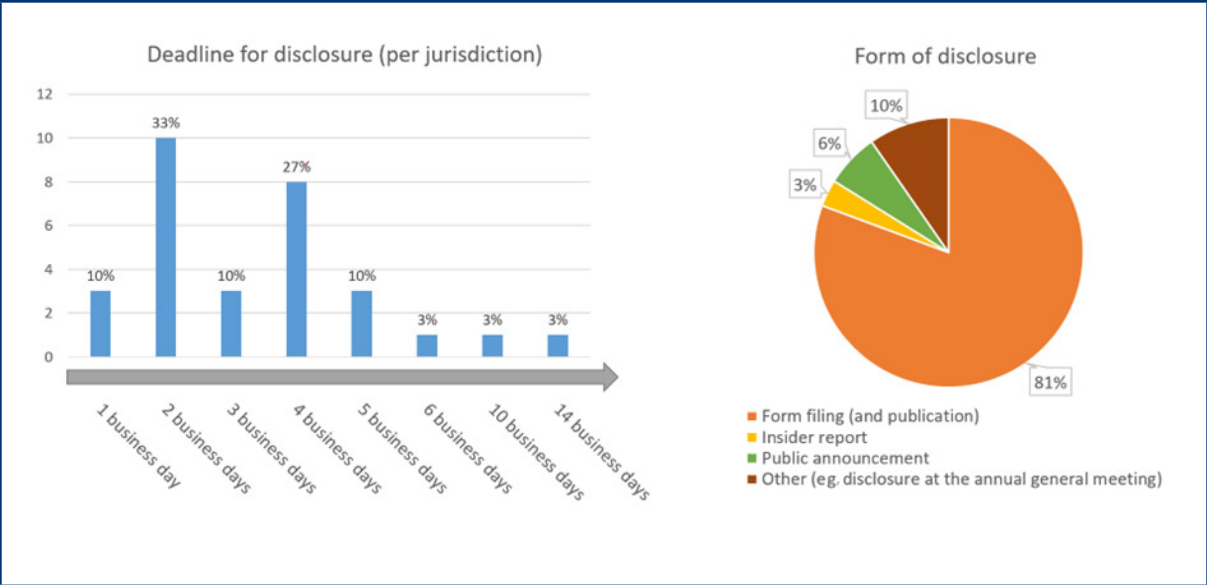
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Analysis of the Survey on Stake-Building Disclosure and Mandatory Tender Offers 2025

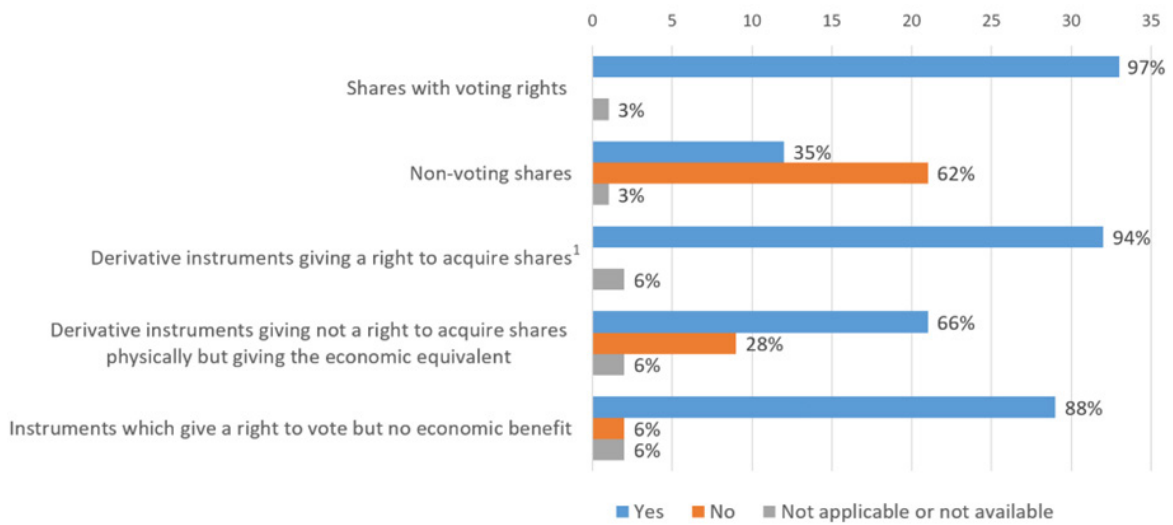
Q1 At what level(s)/threshold(s) is/are disclosure of stake required?



Q2 How soon after crossing the level/threshold and in what form is the disclosure required to be made?

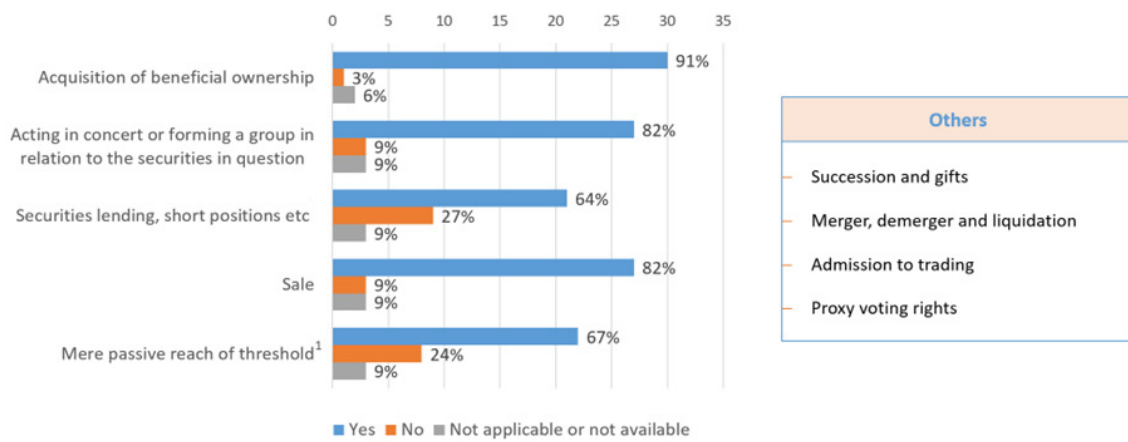


Q3 What type of instruments/securities are counted towards disclosure level/threshold (per jurisdiction)?



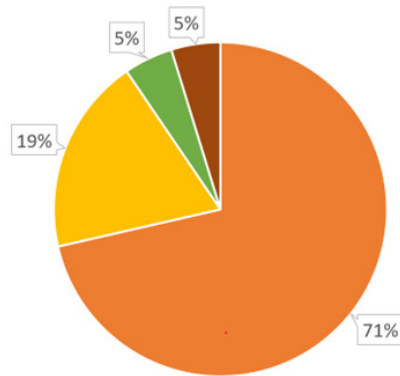
¹ In some cases, this is only within a specified time period (eg, 60 days in the US)

Q4 What transactions/events/activities trigger the disclosure (per jurisdiction)?



¹ In some cases, this disclosure is required in regular periodic filings but not immediate filings (eg, US).

Q5 What is included in the definition of beneficial ownership that triggers disclosure (per jurisdiction)?



- Economic interest, power to direct the voting of the securities and power to direct the holding or disposition of the securities
- Power to direct the voting of the securities and power to direct the holding or disposition of the securities
- Power to direct the voting of the securities only
- Economic interest only

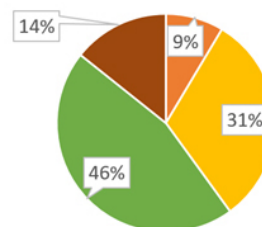
Q6 What constitutes acting in concert or forming a group?

It generally refers to two or more persons coordinating to exercise influence or control over a company, usually through voting rights, acquisitions or strategic decision-making.

A few examples

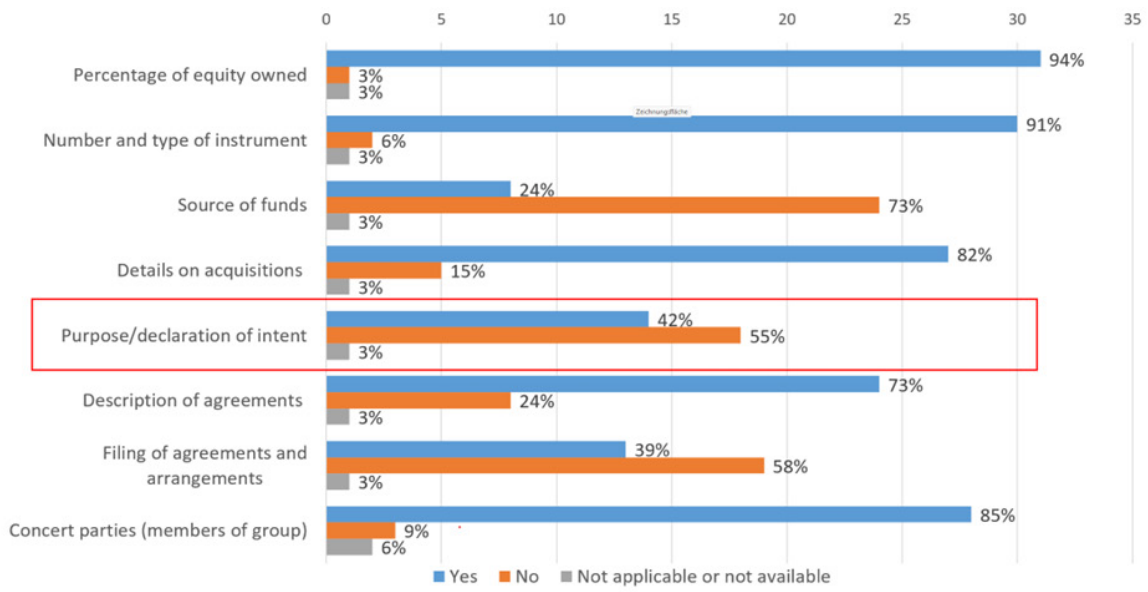
- 'Two or more persons or entities are deemed to act in concert when they cooperate between themselves with the purpose of gaining, maintaining or strengthening control over a listed company'.
- 'It refers to persons who have any kind of agreement – formal or informal – to coordinate their decisions regarding the securities of an issuer.'
- 'Arrangements with a third party with whom a person has entered into an agreement to take a long-term common position with respect to the management of a company through a coordinated exercise of voting rights constitutes acting in concert / forming a group.'

Form of acting in concert or forming a group

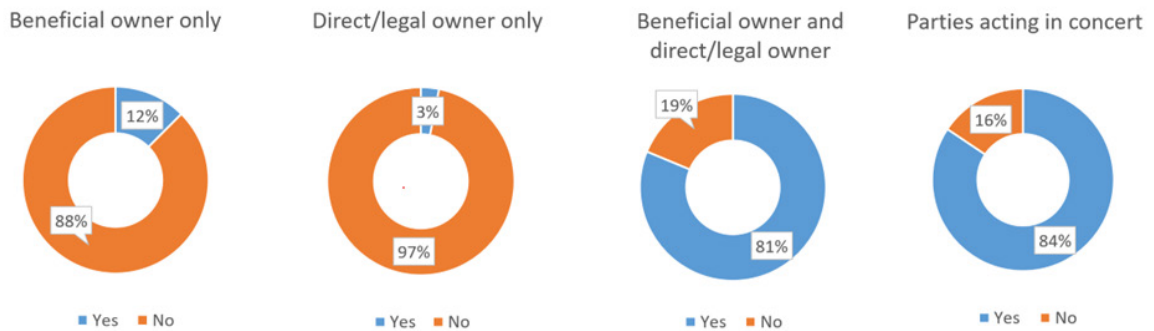


- Requires formal (written) agreement
- Unwritten agreement sufficient
- Parallel action sufficient
- Other (eg. group of companies)

Q7 What disclosure is required (per jurisdiction)?

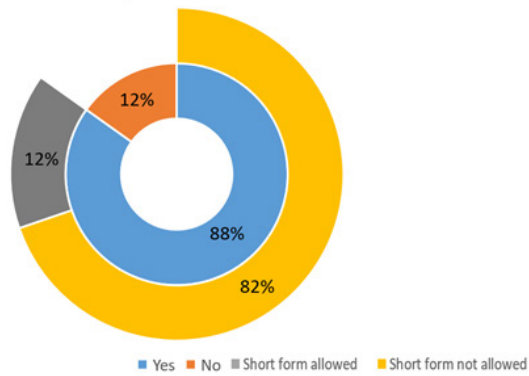


Q8 Who has to disclose?

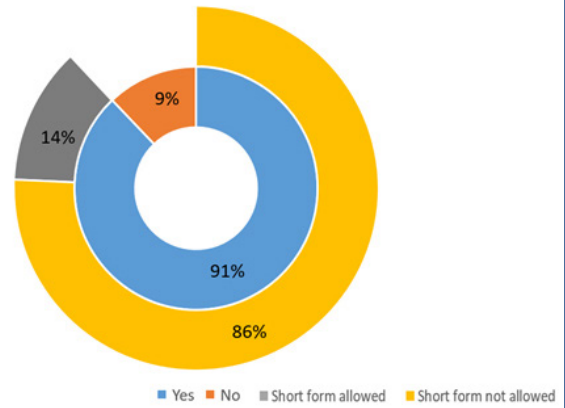


Q9 Are there exceptions/short form of disclosure for certain type of investors?

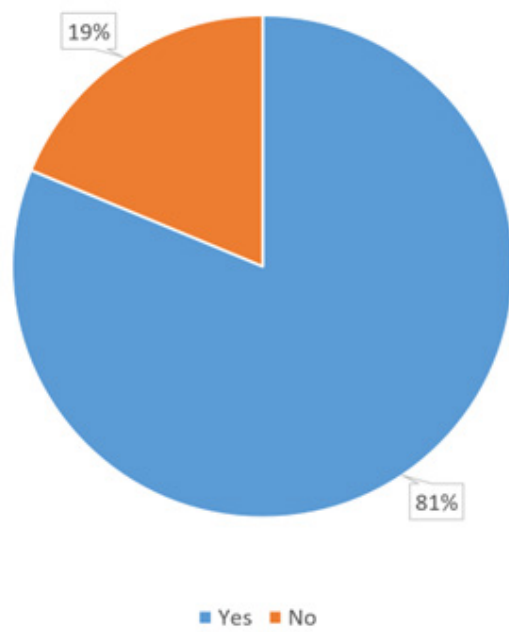
Must money/asset managers disclose their positions?



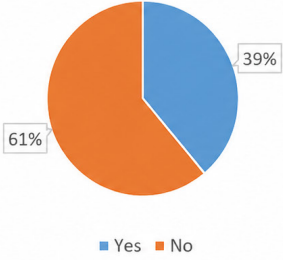
Must passive investors disclose their positions?



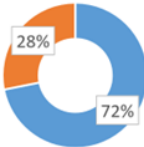
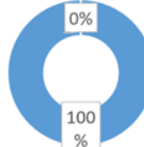
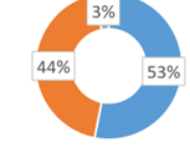
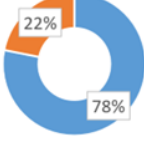
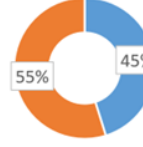
Q10a Is there any trigger for revision of the disclosure statement?



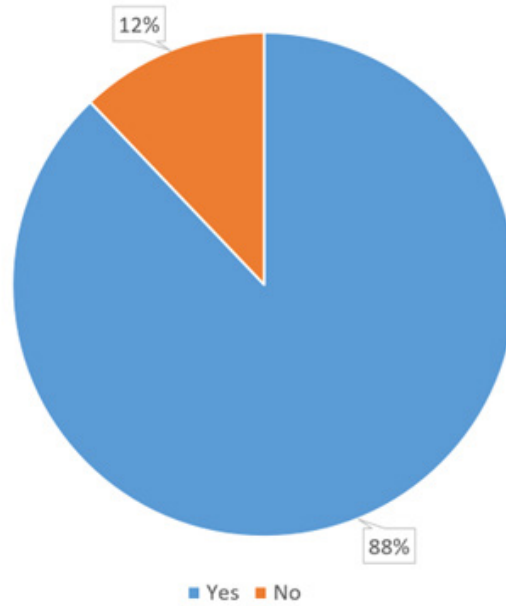
Q10b Is there any trigger for revision of the disclosure statement? If yes...

If the trigger is increase in ownership, how much increase triggers a revision?	If the trigger is a change in intent/purpose, can it be revised or trigger a disclosure requirement without further purchases?	Any other triggers for a revision requirement?
<ul style="list-style-type: none"> - Most jurisdictions follow one of two models: either a 1 per cent step-change model or fixed threshold crossings. - Under the 1 per cent step-change model, any ± 1 per cent change after the initial filing presumptively triggers a revision. - Under the fixed-threshold model, an amendment is required only when the holding crosses the next reportable tier (e.g., 5 per cent, 10 per cent, 15 per cent). - Variants exist: some use different step sizes, some apply 1 per cent updating only after very high holdings. 	 <p>A pie chart with a blue segment representing 'Yes' at 61% and an orange segment representing 'No' at 39%. A legend below the chart shows a blue square for 'Yes' and an orange square for 'No'.</p>	<ul style="list-style-type: none"> - Agreements affecting voting rights (25 per cent) - Changes in group structure or acting in concert (21 per cent) - Changes in the nature or form of holdings (11 per cent)

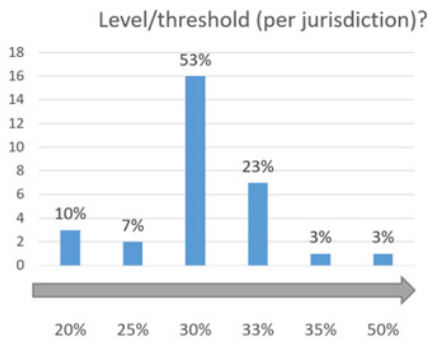
Q11 In case of violation of stake disclosure requirements: what are the sanctions?

Criminal sanctions?	Regulatory sanctions?	Damages?	Equitable relief?	Private right of action?
 <p>A donut chart with a blue segment for 'Yes' at 72% and an orange segment for 'No' at 28%. A legend below shows a blue square for 'Yes' and an orange square for 'No'.</p> <ul style="list-style-type: none"> - Fine - Imprisonment 	 <p>A donut chart with a blue segment for 'Yes' at 100% and an orange segment for 'No' at 0%. A legend below shows a blue square for 'Yes' and an orange square for 'No'.</p> <ul style="list-style-type: none"> - Fine - Suspension - Orders and injunction 	 <p>A donut chart with a blue segment for 'Yes' at 53%, an orange segment for 'No' at 44%, and a grey segment for 'Unclear' at 3%. A legend below shows a blue square for 'Yes', an orange square for 'No', and a grey square for 'Unclear'.</p> <ul style="list-style-type: none"> - Civil liability - Compensatory orders - Pecuniary penalties 	 <p>A donut chart with a blue segment for 'Yes' at 78% and an orange segment for 'No' at 22%. A legend below shows a blue square for 'Yes' and an orange square for 'No'.</p> <ul style="list-style-type: none"> - Loss or suspension of voting rights - Requirement to divest or nullify transactions 	 <p>A donut chart with a blue segment for 'Yes' at 45% and an orange segment for 'No' at 55%. A legend below shows a blue square for 'Yes' and an orange square for 'No'.</p> <ul style="list-style-type: none"> - Civil suits by aggrieved parties - Complaints to regulator

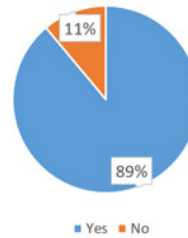
Q12a Has your jurisdiction an MTO requirement?



Q12b If yes... What is the MTO threshold and are there any exceptions available?



Are exceptions, opt-outs¹/opting-ups² available?



Examples
Intra-group transfers
Inheritance and gifts
Mergers, demergers and corporate actions
Restructuring and financial distress situations
Inadvertent/temporary threshold crossing

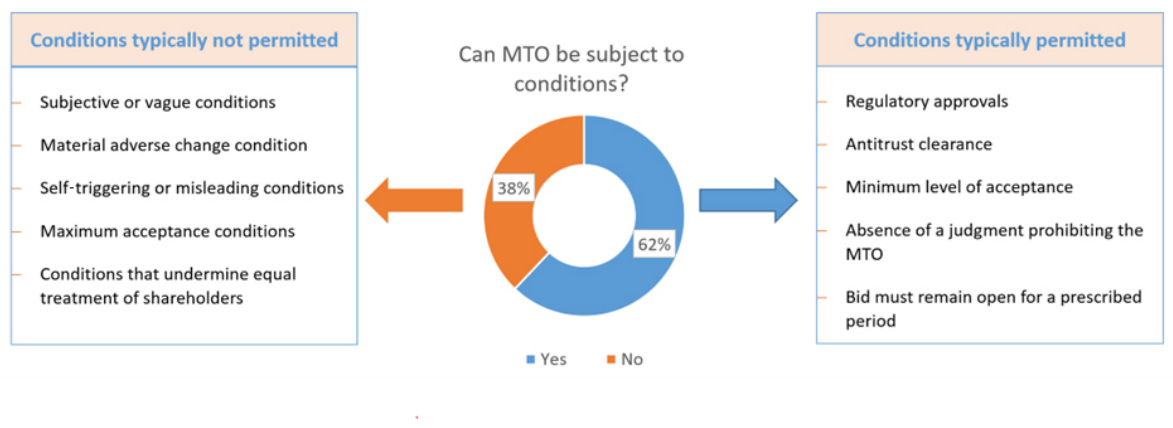
¹ Opting-out means that the obligation to launch a MTO is waived even if the threshold is exceeded.

² Opting-up means that the threshold triggering a MTO is raised, allowing an investor to acquire a higher percentage of shares before an offer becomes required.

Q12c If yes... What triggers an MTO, and what are the consequences of non-compliance?

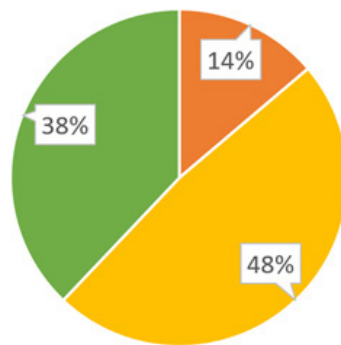
Question	A few examples
What type of instrument/securities triggers MTO?	<ul style="list-style-type: none"> - Voting shares/equity securities (93 per cent) - Convertible instruments (26 per cent) - Derivatives and similar financial instruments (6 per cent)
What transactions/events/activities trigger MTO?	<ul style="list-style-type: none"> - Acquisition of beneficial ownership or control (70 per cent) - Acting in concert of forming a group (20 per cent) - Passive reach of threshold (19 per cent)
What are the sanctions in case the MTO is not launched/completed?	<ul style="list-style-type: none"> - Monetary penalties (74 per cent) - Civil lawsuits or arbitration proceedings (63 per cent) - Loss or suspension of voting rights (59 per cent) - Orders to divest excess shareholding (33 per cent)

Q13a If yes... What are the main features of MTOs in your jurisdiction?



Q13b If yes... What are the main features of MTOs in your jurisdiction?

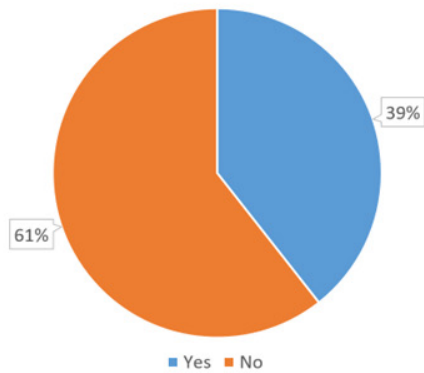
Types of considerations available to shareholders



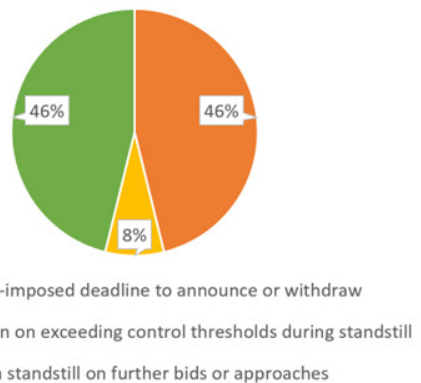
- Cash-only consideration
- Alternative consideration allowed, but cash option required (universally or subject to specific triggers)
- No restrictions on the form of consideration (eg, shares, options and bonds)

Q14: Is there a 'put up or shut up' mechanism in your jurisdiction?

Is there a put up/shut up mechanism?



What happens when no offer is made?



Survey completed by the participants: full text

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Australia

	Which jurisdiction are you covering?	Australia
1.	<p>At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?</p>	<p>≥five per cent – substantial holding disclosure</p> <ul style="list-style-type: none"> A person (including their associates) who acquires five per cent or more of a relevant interest in the voting share of a listed company or managed investment scheme must lodge a substantial holding notice (Form 603) within two business days. This includes both direct and indirect holdings (ie, a party’s own holdings and those it has control over or arrangements with). Any change of one per cent or more thereafter also requires disclosure within two business days. During a takeover bid, disclosure must be made by 0930 the next trading day for movements of at least one per cent (even if the party holds less than five per cent). Ceasing to hold five per cent or more also triggers a disclosure obligation. <p>Proposed reforms</p> <p>In late 2024, the Australian government proposed changes to the beneficial ownership disclosure requirements (Proposed Reforms), which, if implemented, would lead to a more complex and onerous regime for disclosing substantial holdings. Under the Proposed Reforms:</p> <ul style="list-style-type: none"> Derivative-based interests in listed entities will give rise to a ‘relevant interest’ regardless of settlement method or whether the counterparty has any control over the underlying securities.

		<ul style="list-style-type: none"> • Substantial holding notices will need to include breakdowns for different categories of derivative-based relevant interests. • Any movement of one per cent or more in aggregate derivative-based holdings, or any of the three categories of derivative-based holdings will trigger a disclosure obligation. • Substantial holdings will need to be disclosed when an entity becomes listed. • Australian-listed foreign entities will become subject to the substantial holding and tracing notice regimes. <p>There is still a way to go before any proposed changes to Australia's beneficial ownership disclosure regime would become effective and submissions/feedback on the proposal are still being considered. We have included a summary here for completeness.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure?</p> <p>Disclosure must be within two business days. If disclosure is required in connection with a takeover bid, disclosure must be made by 0930 on the next trading day.</p> <p>b. Form of disclosure: press release, form filing, insider report etc?</p> <p>Disclosure must be made using a Form 603 (Notice of initial substantial holder), which must be lodged with the Australia Stock Exchange (ASX).</p> <p>If a substantial holder is increasing its interest, a Form 604 (Notice of change of interest of substantial holder) must be lodged and if it is ceasing to be a substantial holder, a Form 605 (Notice of ceasing to be a substantial holder) must be lodged.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. Voting shares: YES</p> <p>b. Non-voting shares: NO</p> <p>c. Derivative instruments (right to acquire): YES (there is no requirement that these instruments be exercisable/convertible within a time period)</p> <p>d. Derivative instruments (economic right): NO (however, under the Proposed Reforms, these would count towards the five per cent threshold)</p> <p>e. Right to vote but no economic interest: YES</p> <p>In Australia, the types of instruments and securities that count towards the substantial holding disclosure threshold are defined by the concept of ‘relevant interest’ in voting shares. The concept of relevant interest is broad and captures:</p> <ul style="list-style-type: none"> • the holders of securities; • those that have the power to exercise, or control the exercise of a voting right attached to securities; or • those that have the power to dispose of or control the exercise of a power to dispose of securities. <p>The concept of control is also broad and has the following definition:</p> <ul style="list-style-type: none"> • An entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies. • In determining whether the first entity has this capacity: <ul style="list-style-type: none"> – the practical influence the first entity can exert – any practice or pattern of behaviour affecting the second entity’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
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		<p>An entity will not be taken to have control if it:</p> <ul style="list-style-type: none"> • and third party have joint capacity to determine the outcome of decisions; or • has the capacity to influence decisions about financial and operating policies and is under a legal obligation to exercise that capacity for the benefit of someone else (ie, under a trust relationship).
4.	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. Acquisition of beneficial ownership: YES</p> <p>b. Acting in concert or forming a group in relation to the securities in question: YES</p> <p>c. Securities lending, short positions etc? NO (however, short sales have their own disclosure/reporting requirements. Additionally, under ASIC Instrument 2021/821, a prime broker or custodian may defer taking into account a relevant interest arising from a borrowing right for compliance with the substantial holding requirement when a control transaction is underway for the relevant listed securities. Despite this, voluntary disclosure to the market and the listed entity is appropriate in such circumstances to avoid the non-disclosure giving rise to unacceptable circumstances.)</p> <p>d. Sale: YES (If a party will no longer be a substantial holder)</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>YES – The Corporations Act does not require an acquisition to be active to require disclosure. If an investor holds 4.9 per cent of a company and the company buys back shares, reducing the total shares on issue, the investor’s voting power may rise above five per cent without acquiring any new shares or taking any action. This would result in that investor needing to lodge a substantial holdings notice.</p>

<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>As noted above the concept of relevant interest extends to:</p> <ul style="list-style-type: none"> • those that have the power to exercise, or control the exercise of a voting right attached to securities; or • those that have the power to dispose of or control the exercise of a power to dispose of securities.
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>In Australia, a person will be considered an associate of another party if they are acting in concert. The definition of associate is broad and extends to a person who has significant influence over another.</p> <p>ASIC Regulatory Guide 128 (RG 128), notes that the following conduct is likely to constitute acting as associates/acting in concert (and therefore may give rise to a relevant interest):</p> <ul style="list-style-type: none"> • jointly signing a s249D (calling of general meeting) or s249N (notice of resolution) notice (or a s252B or s252L notice in the case of managed investment schemes); • formulating joint proposals relating to board appointments or a strategic issue; • accepting an inducement to vote or act in a specific way; • agreeing on a plan concerning voting; or • limiting a parties freedom to vote (eg, by granting another investor their irrevocable proxy). <p>RG 128 also notes the following conduct which may attract the scrutiny of the Australian regulator (the Australian Securities and Investment Commission (ASIC)):</p>

		<ul style="list-style-type: none"> • conduct which involves the replacement of directors of a company and other circumstances involving directing the exercise of the board's power; • conduct which concerns proposals that have benefits for particular investors rather than investors as a whole; and • investors having a history of collective action in relation to an entity which suggests they act in concert for control purposes. <p>There does not need to be a formal agreement in place and parallel action is sufficient (ie, parallel conduct that suggests a shared objective or strategy may be enough for parties to be associates).</p>
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. Percentage of equity owned: YES</p> <p>b. Number and type of instrument: YES</p> <p>c. Source of funds: NO</p> <p>d. Details on acquisitions (such as date and price): YES</p> <p>e. Purpose/declaration of intent: NO</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer: YES</p> <p>g. Filing of agreements and arrangements described in (f) above: YES</p> <p>h. Concert parties (members of group): YES</p> <p>Section 671B of the Corporations Act detailed the disclosure requirements for a substantial holdings notice.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. Direct/legal owner: YES (not if a party only holds the relevant interest for the benefit of another)</p> <p>b. Beneficial owner: YES</p> <p>c. Parties acting in concert: YES</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. Must money/asset managers disclose their positions? YES (however, there are exceptions and relief available)</p> <p>b. Must passive investors disclose their positions? YES (for example, if, under the terms of a warrant, the holder or issuer automatically gains a relevant interest in voting shares or interests on the expiry of a warrant, the person will still legally acquire the shares or interests when it acquires the relevant interest under the terms of the warrant agreement. There will still be an acquisition, even though the person takes no positive action at the time. On issuing or acquiring the warrant, the person will enter into a transaction in relation to the underlying securities and will acquire the relevant interest in the securities as a result of entering into the warrant agreement.)</p> <p>Disclosures must be made using the prescribed forms (outlined above) and there are no short form options, however, the prescribed forms are relatively short form and are designed to streamline the disclosure process.</p>
10.	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p>	<p>a. Any trigger for revision of the disclosure statement? YES – There are specific triggers that require a revision of a substantial holding disclosure.</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision? A revision is triggered when there is a movement of at least one per cent in the person’s voting power from the last disclosed position. This applies whether the movement is an increase or decrease.</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p>

	<p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>NO – A change in intent or purpose alone does not trigger a disclosure requirement under section 671B of the Corporations Act, unless it is accompanied by a change in the relevant interest or voting power. The disclosure regime in Australia is focused on objective holdings, not subjective intentions.</p> <p>d. Any other triggers for a revision requirement?</p> <p>Notification currently must be made if a person ceases to have a substantial holding or if a takeover bid is made. Under the Proposed Reforms any movement of one per cent or more in aggregate derivative-based holdings, or any of the three categories of derivative-based holdings will trigger a disclosure obligation.</p> <p>e. How soon must the revision be filed?</p> <p>Within two business days (unless disclosure is required in connection with a takeover bid in which case disclosure must be made by 0930 the next day).</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p> <p>There is no statutory moratorium on further acquisitions pending disclosure. The Takeovers Panel may intervene if acquisitions occur in a manner that constitutes unacceptable circumstances, especially if disclosure obligations are not met.</p>
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. Criminal sanctions?</p> <p>YES – Failure to disclose a substantial holding or providing false or misleading information in a substantial holding notice can attract fines or criminal convictions.</p> <p>b. Regulatory sanctions?</p> <p>YES – ASIC may impose regulatory sanctions, including remedial orders, infringement notices and enforcement actions.</p> <p>c. Damages?</p> <p>YES – Failure to comply may give rise to a civil claim for compensation by any person damaged by the contravention</p>

		<p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>Potentially – While not automatic, the Takeovers Panel may declare unacceptable circumstances and order remedies such as loss of voting rights; forced divestment</p> <p>Or restrictions on further acquisitions.</p> <p>These remedies are discretionary and typically arise in takeover contexts where non-disclosure affects market integrity.</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p> <p>YES – There is a private right of action under the Corporations Act. A person who suffers loss or damage due to a breach of disclosure obligations may sue for compensation. This is separate from ASIC’s enforcement powers.</p>
<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/events/ activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. Has your jurisdiction an MTO requirement?</p> <p>YES – However, this is not a universal ‘mandatory bid’ requirement in the same way certain other countries do. Instead, the Corporations Act has a ‘20 per cent rule’ which prevents a person from acquiring a ‘relevant interest’ which would result in that person’s voting power exceeding 20 per cent unless an exception applies (one exception to this rule is launching a takeover bid).</p> <p>This rule applies to voting interests in companies listed on the ASX, unlisted companies with more than 50 shareholders and issued voting interests in an Australian-registered managed investment scheme listed on the ASX.</p> <p>b. Level/threshold?</p> <p>20 per cent or 20 per cent – 90 per cent if the person already owns more than 20 per cent (again subject to certain exceptions, such as the three per cent creep rule).</p>

	<p>c. What type of instrument/securities triggers MTO?</p> <p>The types of instruments/securities that trigger MTO requirements are similar to the securities/instruments which trigger the mandatory notification requirements (as detailed in Q3). The test is whether or not the securities/instrument will give a person a 'relevant interest' which will result in a person's voting power exceeding 20 per cent.</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <ul style="list-style-type: none"> • acquisition of voting power that exceeds 20 per cent; • increase in voting power between 20 per cent and 90 per cent (ie, creeping acquisitions subject to some exceptions). • acting in concert with others to acquire control where the thresholds are met. • indirect acquisitions through entities or arrangements that confer control over voting rights where the thresholds are met. <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>YES – There are several exceptions under section 611 of the Corporations Act, including:</p> <ul style="list-style-type: none"> • Creeping acquisitions: Up to three per cent every six months from a starting point above 19 per cent. A person who has acquired more than 20 per cent under another exception must wait six months before it can make acquisitions under this exception. • Downstream acquisition: Acquisitions resulting from the acquisition of securities in an 'upstream' entity (ie, one which is listed on the ASX or on a specified foreign exchange) which itself has a relevant interest in a 'downstream' ASX-listed company or trust. However, a downstream acquisition may be considered unacceptable by the Takeovers Panel where control of the downstream company appears to be a significant purpose of the upstream acquisition (eg, if the shares in the downstream company comprise over 50 per cent of the upstream company's assets). • Acquisitions approved by shareholders via a resolution: This cannot be used to acquire 100 per cent of an entity and is commonly used for strategic placements of new security issuances where the subscriber will end up above 20 per cent.
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		<ul style="list-style-type: none"> • Security interests: Acquisitions resulting from enforcement of security interest taken over securities in the ordinary course of the acquirer's ordinary course of business of the provision of financial accommodation. • Rights issues and underwriting arrangements. • Schemes of arrangement approved by the court. • Takeover bids (off-market or on-market). <p>f. What are the sanctions in case the MTO is not launched/completed?</p> <ul style="list-style-type: none"> • Civil penalties under the Corporations Act; • orders from the Takeovers Panel, including: unwinding the transaction; freezing voting rights or requiring divestment of shares; • ASIC enforcement actions, including fines and disqualification of directors and • court proceedings for breaches of takeover provisions
13.	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>YES – The bid price cannot be lower than the price which the bidder paid for a target security within the previous four months.</p> <p>b. Can MTO be subject to conditions?</p> <p>YES – Only if it is an off-market bid. Common bid conditions include: minimum relevant interest threshold (often 90 per cent to tie in with the compulsory acquisition threshold), regulatory approvals (eg, foreign investment approval or anti-trust approval), no material adverse change in relation to the target, no material transactions by the target and no 'prescribed occurrences' in relation to the target (eg, no new equity issues, no insolvency events and no sale of the main undertaking).</p> <p>Conditions cannot be self-triggering (ie, dependent on the bidder's opinion) and there cannot be any maximum acceptance condition.</p>

		<p>c. Consideration to shareholders</p> <p>There are no restrictions on what can comprise offer consideration. It can be in the form of cash (in any currency), securities (whether quoted or unquoted) or other non-cash assets, or a combination of those, provided that all target securityholders are offered the same thing. A bidder can offer consideration alternatives (eg, cash or shares), again provided that all target securityholders are offered the same alternatives.</p> <p>d. Other</p> <ul style="list-style-type: none"> • All shareholders must be offered the same terms. • Bidders must provide a bidder's statement; targets must respond with a target's statement. • Offer period must be a minimum of one month, maximum of 12 months. • Compulsory acquisition is available if the bidder reaches 90 per cent ownership and has acquired 75 per cent of the securities they offered to buy.
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	Australia doesn't have a mandatory, codified 'put up or shut up' rule for takeovers.

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Austria

	Which jurisdiction are you covering?	Austria
1.	<p>At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?</p>	<p>The thresholds for disclosure are when a person’s holding of voting rights or financial instruments reaches, exceeds or falls below four per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 45 per cent, 50 per cent, 75 per cent and 90 per cent of the total voting rights attached to the shares of the issuer.</p> <p>Issuers listed on the Vienna Stock Exchange can introduce an additional disclosure threshold of three per cent in their articles of association.</p> <p>Pursuant to the Austrian Takeover Act, an issuer may amend its articles of association to lower the threshold of a controlling interest from 30 per cent, with such lower threshold being reached, exceeded or fallen below triggering an additional reporting obligation.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Disclosure must be made promptly and in any event by close of business on the second trading day.</p> <p>b. Disclosure must be made using the Austrian Financial Market Authority’s (FMA) online form. After submitting the disclosure notification via the online tool with the FMA, the investor will receive the disclosure notification as a Microsoft Word document, which the investor should forward to the issuer and, if required, to the Vienna Stock Exchange.</p> <p>Additionally, disclosure must be made public by the issuer via the officially appointed mechanism for Austria within two trading days after receiving the respective information.</p> <p>Additional comment: The issuer is also subject to disclosure of its position in case the percentage of its own shares (treasury shares) held reaches, exceeds or falls below five per cent or ten per cent.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO – in the case of preference shares (usually non-voting shares vested with a preferred dividend). If the respective preferred dividend is not paid by the issuer, the preference shares temporarily gain voting rights until the preferred dividend has been paid. Consequently, the preference shares are counted towards disclosure threshold.</p> <p>c. YES. Must such instruments be exercisable/convertible within a time period? NO</p> <p>d. YES</p> <p>e. YES – As there is no exemption for stock lending, the general disclosure position on an outright transfer of shares applies. Further, under Austrian law, share lending is seen as a full transfer of title, leading to disclosure requirements at the time shares are transferred and again when the shares are transferred back.</p> <p>f. Other type of instruments:</p> <ul style="list-style-type: none"> – depository receipts of an issuer with its home Member State in Austria listed on a European Economic Area (EEA)-regulated market even when the shares of the issuer themselves are not listed; and – covered warrants and exchangeables (if underlying shares are already in issue).
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES, if the acquirer obtains voting control.</p> <p>b. YES</p> <p>c. YES, as regards short position, different disclosure thresholds apply (0.1 per cent required disclosure to the FMA and after 0.5 per cent is reached, the short position is publicly disclosed (and every 0.1 per cent thereafter)).</p> <p>d. YES</p> <p>e. YES</p> <p>f. Other:</p> <ul style="list-style-type: none"> – custodianship (if custodian has discretion over voting rights); – the nominee, regardless of whether it has discretion over voting rights, and beneficiary if it has discretion over voting rights deposited with the nominee; and – collateral giver/taker (assuming outright transfer of the securities).
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. NO</p> <p>b. YES</p> <p>c. YES</p> <p>d. N/A</p> <p>e. N/A</p> <p>f. The relevant Austrian law does not explicitly refer to the concept of beneficial ownership itself, but rather to the question of whether the acquirer directly or indirectly gains voting control.</p>

6.	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. A concert party arises when an agreement is reached that imposes the obligation on the parties to pursue a common policy with respect to the management of the relevant listed company by exercising the voting rights in mutual consent. In such case, the voting rights of members of a concert party are aggregated for the purposes of the disclosure rules.</p> <p>b. The respective agreement must be legally binding, that is, an oral agreement would be sufficient. Gentlemen's agreements or 'parallel actions' are not sufficient.</p>
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES (as regards the price: NO)</p> <p>e. NO</p> <p>f. NO, only to the extent necessary for the classification of the respective type of security.</p> <p>g. NO</p> <p>h. YES</p> <p>i. Other:</p> <ul style="list-style-type: none"> – disclosure threshold touched (crossed, reached, exceeded); and – period of exercise, date of maturity and information about the holder of the financial instrument.

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES, if the undertaking is directly or indirectly controlled, or the beneficiary of voting rights deposited with the nominee, if the beneficiary has discretion over the voting rights.</p> <p>c. YES</p> <p>d. Other:</p> <ul style="list-style-type: none"> – custodian (if it has discretion over voting rights); and – collateral giver/taker in case of outright transfer.
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>In general, since disclosures must be submitted via an online standardised form, there is effectively no ‘short form’ option available.</p> <p>a. YES, if they have discretion over voting rights and/or own proprietary holdings.</p> <p>b. YES</p> <p>c. In general, a subsidiary is not required to make a disclosure where its parent makes the disclosure for the subsidiary instead.</p>

<p>10. What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>There is no separate trigger for a revision of the disclosure statement. However, as described in Question 1, any time a shareholding held or attributable to a party reaches, exceeds or falls below a relevant threshold, a new disclosure obligation arises.</p>
<p>11. In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES, in the case of legal entities, administrative financial sanctions of: (1) up to €10m; or (2) five per cent of the total annual turnover; or (3) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined. Different sanctions apply to natural persons (ie, the higher of up to €2m or up to twice the profits gained or losses avoided).</p> <p>c. NO</p> <p>d. YES, the suspension of the exercise of voting rights attached to shares is possible in cases of the most serious breaches.</p> <p>e. NO</p>

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/events/ activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES, directly or indirectly obtaining a controlling interest (30 per cent of the voting rights/share capital plus one voting share unless otherwise specified in the articles of association of the issuer) in a stock corporation. Note: In case of shareholdings up to 30 per cent, voting rights exceeding 26 per cent are statutorily suspended.</p> <p>c. Only shares with permanent voting rights are to be considered.</p> <p>d. Acquisition of shares and acting in concert/forming a group with other owners of securities/bidders.</p> <p>e. YES, for example, where the criteria for making a mandatory bid is otherwise met but another shareholder (including those acting in concert) holds at least the same number of voting rights; the shares don't carry a majority of voting rights due to attendance at shareholders meetings; the exercise of voting rights is limited to 30 per cent by the by-laws of the target; or the legal entity that ultimately has the right to exercise the controlling interest does not change as a result of the acquisition.</p> <p>f. Failure to comply with the specified requirements constitute administrative sanctions punishable by a fine of between €5,000 and €50,000, provided that the offence is not subject to more severe sanctions according to other applicable laws, for example, in the case of fraud. In addition to other civil and administrative sanctions, violations of the Takeover Act can result in the suspension of all voting rights of the violator's shares and – in the case of serious violations – suspension of other shareholder rights (such as to receive dividend payments).</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES, unless an exemption applies (eg, significant change in circumstances) the offer price must:</p> <ul style="list-style-type: none"> – equal or exceed the highest consideration paid by the offeror or any party acting in concert for the shares within the preceding 12 months before the public bid; and – at least correspond to the average stock exchange price weighted by the respective trading volumes of the shares in the previous six months before the day on which the intention to make a public bid was announced. <p>Note: Share purchases for a consideration exceeding the MTO consideration within nine months after the expiry of the MTO acceptance period increases the MTO consideration retroactively.</p> <p>b. YES, in general, the offeror can make its bid subject to certain conditions and/or rights of withdrawal. However, such conditions and/or rights of withdrawal must be objectively justified, in particular, if they are based on legal obligations of the offeror or their fulfilment or exercise is not solely subject to the offeror's discretion (eg, merger clearance, or investment control approval).</p> <p>c. NO, but the cash offer is mandatory. In addition, the offeror may offer an exchange for other securities.</p> <p>d. N/A</p>
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<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>In a sense:</p> <p>If (1) the offeror has disclosed considerations or intentions to make a bid or to bring about facts obliging it to make a bid; (2) the offeror has disclosed the decision of its management board and supervisory board to make a bid; or (3) the offeror has publicly stated that a bid cannot be excluded and the offeror does not make a bid, the offeror and parties acting in concert shall not be permitted to make further bids for the equities of the offeree company for a period of one year.</p> <p>During the same period, they shall also be prohibited from acquiring shares obliging them to make a bid.</p> <p>Furthermore, the offeror shall be prohibited from making a bid for a period of one year if it has publicly stated that it will not make a bid or will not consider any activities to bring about facts obliging it to make a bid.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Belgium

	Which jurisdiction are you covering?	Belgium
1.	<p>At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?</p>	<p>Under Belgian law, any natural or legal person who acquires (whether directly or indirectly) voting securities in an issuer is required to proceed to a notification to the issuer and to the Financial Services and Markets Authority (FSMA) of the number of and proportion of existing voting rights of the issuer that it holds as a result of the acquisition if the voting rights attached to the voting securities reach five per cent or more of the total existing voting rights.</p> <p>It should also be mentioned that a similar notification is also required in the event of a direct or indirect acquisition of voting securities, where, as a result of this acquisition, the voting rights hold reach or exceed ten per cent, 15 per cent, 20 per cent and so on (by each increase of five per cent) of the total existing voting rights.</p> <p>A similar notification is also required in case of disposal (whether directly or indirectly) of voting securities, where as a result of the disposal, the voting rights fall below one of the thresholds mentioned above.</p> <p>Other cases where such notification obligations can arise are also mentioned below (see Question 4).</p> <p>Additionally, the issuers' articles of association may also provide for additional lower or higher thresholds than the ones mentioned above. Only the following thresholds can be used in the articles of association: one per cent, two per cent, three per cent, four per cent, or 7.5 per cent.</p>

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. The notification to be made as mentioned above should be made promptly, and no later than four days (of trading) of the triggering event (which is usually identified as the acquisition or alienation of the securities, but which can correspond to other triggering events as well).</p> <p>The law identifies five triggering events as follows:</p> <ol style="list-style-type: none"> 1. the person who is required to proceed to the notification is aware of the acquisition, transfer or right to exercise the voting rights, or should have been aware of it, taking into account the circumstances, regardless of the date on which the acquisition, transfer or right of exercise of voting rights takes effect; 2. the shares are traded for the first time on a regulated market; 3. the person who is required to proceed to the notification is informed of a modification of the repartition of voting rights following which the voting rights held cross one of the aforementioned thresholds); 4. an agreement to act in concert is concluded, amended or terminated (where as a result, the percentage of voting rights concerned by the agreement or one of the parties to the agreement would cross the thresholds aforementioned); and 5. the succession is accepted, subject to inventory where applicable, where holdings are acquired by succession. <p>b. The notification to be made to the issuer can be made electronically. The notification to be made to the FMSA is to be made electronically.</p> <p>The FSMA recommends using the standard form that it issued on the basis of the European form. The issuer should make public the information contained in the notification that it received or that it makes. It is also foreseen that such information should be made available on the issuer's website.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES. Must such instruments be exercisable/convertible within a time period? NO</p> <p>d. YES</p> <p>e. YES</p> <p>The Belgian law refers to voting securities, which is larger than voting shares.</p> <p>Additionally, the law also applies to voting rights as such and assimilated financial instruments.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. NO</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>f. Other?</p> <p>With regard to point (a), the acquisition of beneficial ownership as such is not defined as a triggering event. However, as the notification concerns both direct and indirect acquisition, and disposals of voting securities, voting rights and assimilated financial securities, the acquisition of a beneficial ownership in the context of the acquisition of such instruments (and crossing of the relevant thresholds) would typically qualify as a triggering event.</p> <p>Under Belgian law, the events that can lead to a notification obligation are the following: (1) acquisition or disposal of voting securities; voting rights or assimilated financial instruments; (2) admission to trading on a regulated market; (3) crossing of thresholds; and (4) the conclusion, modification and termination of an action in concert agreement.</p> <p>Other transactions/events/activities which trigger the disclosure thus also include ‘events, that have changed the distribution of voting rights’, and following which the percentage of voting rights held crosses the aforementioned thresholds.</p> <p>The law also provides certain cases in which ‘any natural person or legal entity is deemed to acquire, transfer or indirectly hold securities conferring voting rights in an issuer’: (1) ‘when securities conferring voting rights are acquired, transferred or held by a third party acting on behalf of this natural person or legal entity, whether or not that third party is acting in its own name’; (2) ‘when securities conferring voting rights are acquired, transferred or held by an undertaking controlled by this natural person or legal entity’; or (3) ‘when this natural person or legal entity acquires or transfers control of an undertaking that holds securities conferring voting rights of an issuer’.</p>
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	<p>The law also foresees that the rules applicable to the notification also apply when a natural or legal person acquires or disposes of voting rights or has the right to exercise such rights, in any of the following cases or in any combination thereof: (1) 'an agreement providing for a temporary transfer of voting rights for consideration'; (2) 'a pledge of securities conferring voting rights, provided that the pledgee controls the voting rights'; (3) 'a usufruct on securities conferring voting rights, provided that the usufructuary controls the voting rights'; (4) 'a deposit of securities conferring voting rights, provided that the depositary may, in the absence of specific instructions from the holders of the securities, exercise the voting rights as it sees fit'; and (5) 'a proxy, provided that the proxy may, in the absence of specific instructions from the holders of the securities, exercise the voting rights as it sees fit'.</p> <p>Such rules also apply in the cases of modification and termination of the aforementioned situations, except for the termination of (5).</p> <p>Additionally, the law foresees some specific circumstances: the case of undertaking for collective investment (which is further detailed below), and joint ownership. In the latter, the notification obligation is normally imposed to the party holding the voting rights. Where one party holding the voting rights has not been identified, the obligation is imposed on all persons concerned by the joint ownership.</p> <p>Finally, it should be noted that for the purposes of the law, a person is deemed to have indirectly acquired, transferred or held securities conferring voting rights in an issuer: (1) when the securities are acquired, transferred or held by a third party acting on their behalf; (2) when the securities are acquired, transferred or held by an entity controlled by this person; or (3) when a person acquires or disposes of the control of an undertaking holding such securities.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>N/A</p>
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a) 'Persons acting in concert' are defined as 'a) natural persons or legal entities acting in concert within the meaning of Article 3, section 1, 5°, a), of the Law of 1 April 2007 on takeover bids; b) natural persons or legal entities who have entered into an agreement to exercise their voting rights in concert with a view to pursuing a lasting common policy with regard to the issuer concerned'.</p> <p>For the purposes of this definition, it should be noted that the aforementioned Article 3, section 1, 5°, a) of the Law of 1 April 2007 defines 'persons acting in concert' as 'a) natural or legal persons who cooperate with the offeror, with the target company or with other persons, on the basis of an agreement, formal or tacit, oral or written, with the aim of obtaining control of the target company, of causing an offer to fail or of maintaining control of the target company; b) natural or legal persons who have entered into an agreement to exercise their voting rights in concert with a view to pursuing a lasting common policy with regard to the company in question'.</p> <p>b) As mentioned in the definition above, in this context, it is not required for the agreement to be a formal agreement.</p> <p>For the sake of completeness, please note that in certain cases, the disclosure information also covers, apart from the owner, persons deemed to acquire, transfer or hold securities. This is the case, for example, for controlled entities and persons acting for the account of someone else.</p>
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7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. NO</p> <p>e. NO</p> <p>f. NO</p> <p>g. NO</p> <p>h. YES</p> <p>i. Other?</p> <p>Additional information to be disclosed is the following:</p> <ul style="list-style-type: none"> – ‘the name of the issuer of the securities conferring voting rights or, for similar financial instruments, the name of the issuer of the underlying securities conferring voting rights’; – the reasons for the notification (in particular among the reasons listed in the Royal Decree); – the name of the person holding the securities or instruments and, for legal entities, the address of their registered office or, failing that, a correspondence address; and – ‘the date on which the legal threshold or, where applicable, the statutory threshold determined in accordance was reached, exceeded or fallen below’. <p>In certain cases identified by the law, additional information may also need to be disclosed. This includes:</p> <ul style="list-style-type: none"> – the name and, in the case of a legal entity, the address of the registered office or, failing that, a correspondence address of the holder of securities conferring voting rights through which the natural person or legal entity referred to in the aforementioned
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		<p>Article 7 acquires voting rights or the right to exercise them, or to which it transfers voting rights, provided that the holder of securities conferring voting rights is itself subject to notification; and</p> <ul style="list-style-type: none"> - the acquisition or disposal of control of an undertaking which holds securities conferring voting rights in an issuer, as the event giving rise to the notification. <p>All notifications should also mention the situation which results from the event which gave rise to this notification. Further explanations are provided in the law.</p> <p>The notification should mention the number of voting rights held directly or indirectly, and the percentage which this number represents regarding the total number of existing voting rights.</p> <p>Additional information is to be provided where there are distinct categories of titles or not, and in case of assimilated financial instruments.</p> <p>Where applicable, the notification should also cover the chain of companies controlled through which the shareholding is effectively held. The notification should cover the complete chain of companies, and include the name and registered office of each controlled company. The information to be completed for each company required to a notification as mentioned above should be included for each controlled entity in case of a chain of companies.</p> <p>The information to be provided in case of persons acting in concert should also cover some additional information, notably: 'the names of all persons who are parties to the concert action agreement, as well as, for all legal entities that are parties to the agreement, the address of their registered office or, failing that, a correspondence address'. The information to be included in notifications should be included jointly, 'for all persons who are parties to the concert action agreement and individually for all persons who are parties to the concert action agreement'. Some exceptions exist.</p> <p>Necessary contact details should also be transmitted to the FSMA.</p>
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<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. NO</p> <p>b. NO</p> <p>c. YES</p> <p>d. Others?</p> <p>As mentioned above, the notification obligation applies to legal and natural persons who directly or indirectly acquire or dispose of the holding of voting securities, assimilated financial instruments or voting rights, as well as to the person who can exercise the voting rights.</p> <p>Except where applicable, the notification obligation is also imposed to the issuer itself.</p> <p>The obligation of notification is also imposed on additional different persons who acquire or dispose, directly or indirectly of voting rights or who can exercise the voting rights in the following cases:</p> <ul style="list-style-type: none"> • transferor and transferee (in case of ‘an agreement providing for a temporary transfer of voting rights for consideration’); • pledger and pledge holder (in case of ‘a pledge of securities conferring voting rights, provided that the pledgee controls the voting rights’); • the person who granted the usufruct and the usufructuary (in case of ‘a usufruct on securities conferring voting rights, provided that the usufructuary controls the voting rights’); • depositor and depositary (in case of ‘a deposit of securities conferring voting rights, provided that the depositary may, in the absence of specific instructions from the holders of the securities, exercise the voting rights as it sees fit’); and • principal and agent (in case of ‘a proxy, provided that the proxy may, in the absence of specific instructions from the holders of the securities, exercise the voting rights as it sees fit’).
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		<p>An exception applies to termination in the last case.</p> <p>In the case of parties acting in concert, it should be noted that the obligation of notification is imposed jointly to all parties acting in accordance, regardless of the importance of their participation. Only one notification is, in that respect, required.</p> <p>Specific rules apply to cases where a third party acts in its name but on behalf of another person, cases where the notification obligation falls on multiple parties, cases of joint ownership and to undertakings for collective investment.</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES</p> <p>b. YES</p> <p>There is no short form foreseen. Asset managers will, depending on the case, sometimes be required to disclose their positions. As mentioned above, among the persons to whom the notification obligation is imposed, it should be taken into account that under Belgian law, the notification/disclosure obligation is also imposed to the person who can exercise the voting rights. For undertakings for collective investment, it should in particular be noted that while the notification obligation is in principle imposed to them, when they entrust another entity with the exercise of the voting rights attached to participations they hold, it is to this other entity that the notification obligation is imposed (insofar as in the absence of specific instructions, this entity may exercise the voting rights as it sees fit). In case of cascading delegation, this rule also applies.</p> <p>There is no short form foreseen.</p> <p>c. The law contains some exemptions to the obligation of notification: (1) securities conferring voting rights acquired solely for the purpose of offsetting or settling transactions within three trading days after the transaction; (2) depositaries, (3) market makers; (4) voting rights held in a negotiation portfolio of a credit institution or investment firm (provided that certain conditions are met); (5) certain voting rights as part of the stabilisation period; and (6) securities conferring voting rights issued to members of the European System of Central Banks (ESCB) or by them in the performance of their monetary policy functions. Certain conditions should in that regard be complied with.</p>

		<p>A company can, subject to certain conditions, be exempted from the notification obligations when the notification is done by its parent.</p> <p>In certain cases, the notification can take the form of only one sole notification. This is the case 'if the threshold above which notification is required ceases to be reached as a result of transfers made before the expiry of the notification period' or 'if the threshold below which notification would have been required is again reached as a result of acquisitions made before the expiry of the notification period'.</p>
10.	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>In certain cases, the notification can take the form of only one sole notification. The trigger for the disclosure and for the revision of the disclosure statement is a reach or crossing of the aforementioned thresholds, including in the case of any modification to the chain of control for example.</p> <p>In certain cases, the notification can take the form of only one sole notification. Belgian law also foresees a revision of the disclosure statement where assimilated financial instruments are exercised and where assimilated instruments were not exercised at the due date and which result in a (above or below) crossing of the aforementioned thresholds. An update is also required when as a result of the exercise of the assimilated financial instruments securities granting voting rights are acquired and that the total number of voting rights reaches or crosses the aforementioned thresholds.</p> <p>In certain cases, the notification can take the form of only one sole notification. In such cases, the update shall be made promptly and no later than four trading days as of the exercise of the assimilated financial instruments.</p> <p>In certain cases, the notification can take the form of only one sole notification. There is no moratorium foreseen.</p>

<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>For each point, please find our response below:</p> <p>a. In case of violation of the disclosure requirements; communication of incorrect or incomplete information voluntarily; or refusal to communicate to the FSMA information they are required to communicate in accordance with Article 23 of the Law of 2 May 2007, or in case of communication to the FSMA of incorrect or incomplete information, persons can be punished with an imprisonment of between one month and one year and/or a fine of between €50–10,000.</p> <p>Book 1 of the Belgian penal code is also applicable to infringements punished by Title II of the Law of 2 May 2007 relative to the disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and containing various provisions (the 'Law of 2 May 2007').</p> <p>b) In summary, the FSMA is provided broad powers regarding disclosure obligations, including the following:</p> <ul style="list-style-type: none"> • ordering issuers, holders and market participants to provide disclosure information and documents; • conducting on-site inspections, examining records, and accessing computer systems; • requiring timely public disclosure of information; and • suspending (for up to ten days) or prohibiting of trading on Belgian markets for disclosure violations.
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		<p>Detailed information on the powers granted to the FSMA can be found hereunder.</p> <p>The powers granted to the FSMA include the powers:</p> <ul style="list-style-type: none"> • ‘to order an issuer, its directors or persons who control it or are controlled by it to provide the information that must be disclosed or made public (...) and, if necessary, to require the disclosure of additional information and documents’; • to order an issuer to make public the information necessary and within the time limits it determines; • ‘to require a holder of a holding, its directors or persons who control it or are controlled by it to provide the information that must be disclosed (...) and, if necessary, to require the disclosure of additional information and documents’; • ‘to order a person subject to a notification obligation to make such notification (...)’; • ‘to carry out inspections and on-site assessments on Belgian territory, to examine and make copies of any documents, files and records on site and to have access to any computer system, in order to ensure compliance (...)’ with the notification requirements amongst others; • ‘to order the market operators of regulated markets, the financial intermediaries referred to in Article 2, 9°, of the Law of 2 August 2002 and their principals to provide all information, documents or items that the FSMA deems necessary for the performance of its duties. Persons who are successively involved in the transmission of orders or in the execution of the transactions concerned, and their principals, are bound by the same obligation’; • ‘to suspend, by means of a request to that effect addressed to the market operator concerned, trading on a Belgian regulated market for a maximum period of ten days at a time, where it has reasonable grounds to believe that the issuer has infringed the provisions of Title II or its implementing decrees’; and
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	<ul style="list-style-type: none"> • 'prohibit, by means of a request to that effect addressed to the market operator concerned, trading on a regulated Belgian market where it finds or has reasonable grounds to believe that the provisions of Title II or its implementing decrees have been infringed'. <p>Where a person does not comply with the injunction given by the FSMA in the situations mentioned above, the FMSA can impose a penalty.</p> <p>The FMSA can also make public the fact that an issuer or a person subject to a notification obligation did not comply with its obligations under Title II of the Law of 2 May 2007 or its implementing decrees. In that context, the FMSA also informs the person subject to the notification requirement of its intention and can invite that person, in a specific delay, to send their observations where applicable. After such delays, the FSMA can make public a warning.</p> <p>In case of violation, the FSMA can also impose administrative fines, the amount of which are determined in the law.</p> <p>c. Under Belgian law, the violation of the notification obligation constitutes a tort for which damages can be sought upon the establishment of a damage, fault and causal link between the two.</p> <p>d. Belgian law also foresees some sorts of equitable relief, including the suspension of voting rights.</p> <p>It should, in particular, be noted that no one can participate to a general meeting of shareholders, which has its registered office in Belgium, for a higher number of voting rights than the one it declared holding at least 20 days prior to the date of the general meeting of shareholders. Certain exceptions apply, such as voting rights which constitute less than five per cent. The governing body can also postpone to five weeks a general meeting of shareholders when, within 20 days of the date of the meeting, it receives a participation notification or is aware that such notification should have been or should be made. Additionally, courts can also: '(1) suspend, for a</p>
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		<p>period of up to one year, the exercise of all or part of the rights attached to the securities concerned; (2) suspend, for a period it shall determine, the holding of a general meeting that has already been convened; and (3) order, under its supervision, the sale of the securities concerned to a third party who is not related to the current shareholder, within a period it shall determine and which may be renewed’.</p> <p>e. There is a private right of action for violation of stake disclosure requirements. Indeed, as mentioned above, the court can be required to suspend the rights attached to the securities concerned, suspend the holding of a general assembly that was already convened or order the sale of the securities. In that regard, the procedure before the court can be introduced by the company or one or more shareholder(s) with voting right(s). ‘Where the request is for the suspension of a meeting that has already been convened, the procedure may also be initiated by the person whose securities are subject to a request or decision to suspend the exercise of all or part of the rights attached to them’.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/events/ activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>Please find below an overview of the response to each point:</p> <p>a. YES</p> <p>b. YES (please see point d below).</p> <p>c. The securities triggering a mandatory takeover are securities with effective voting rights in a Belgian company for which at least part of the securities are admitted to trading on a regulated market. Securities which confer access to voting rights, such as warrants are not taken into account.</p> <p>d. The party which, as a result of an acquisition, acting alone, by persons acting in concert with that person, or by persons acting on behalf of that persons, obtains directly or indirectly more than 30 per cent of the securities with voting rights in a Belgian listed company, is in principle obliged to launch a public offer on all securities with voting rights or giving access to voting rights of that company. The acquisition can be direct or indirect.</p> <p>When taking into account the securities with voting rights held indirectly, the securities held by 'linked' persons and persons acting as intermediaries (to the 'linked' persons and to the concerned person) must be added up to the securities held by the concerned person.</p> <p>The law and Royal Decree also address the notions of indirect acquisition and holding company (entreprise détentrice). Article 1, section 2, 6° of the Royal Decree of 27 April 2007 on takeover bids defines the holding company as 'the company, legal entity other than a company, or similar entity that holds more than 30 per cent of the voting securities of a target company, provided that its interest in the target company represents, in its latest statutory accounts filed, either more than half of its net assets or more than half of its average net income over the last three financial years'.</p>
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		<p>In that respect, the aforementioned Royal Decree on takeover bids foresees the specific case of the acquisition of a company and the cases in which an offer must be launched on the listed subsidiary of the acquired company. An offer must be launched where the concerned company acquires directly or indirectly, as a result of the acquisition of securities, the control of the holding company, or when acting in concert, when the persons acting in concert cross the threshold of 50 per cent voting securities of the holding company or of a person exercising directly or indirectly the control over the holding company.</p> <p>This also applies to a company which at least part of the shares are traded on a margin trading facility (MTF), or a segment of an MTF. The threshold is, in such cases, defined at 50 per cent.</p> <p>e. This does not apply to public takeover bids for securities issued by:</p> <ul style="list-style-type: none"> • '1° companies whose purpose is the collective investment of funds raised from the public, whose operations are subject to the principle of risk spreading and whose shares are, at the request of the holders, repurchased or redeemed, directly or indirectly, out of the assets of those companies. The following shall be treated as such repurchases or reimbursements and shall not be subject to the provisions of this Act and its implementing decrees: actions taken by such companies to ensure that the stock market value of their units does not deviate significantly from their net asset value'; and • '2° the central banks of Member States'. <p>Further to Article 7 of the Law of 1 April 2007 on takeover bids, Article 52, section 1 of the Royal Decree of 27 April 2007 on takeover bids foresees other exceptions to the acquisition rules that apply in specific situations: voluntary takeover bids, mergers and acquisitions between linked parties; capital increases in companies in difficulty and preferential subscription rights offerings;</p>
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		<p>in cases where a person already controls the company or holds a larger stake; in cases of inheritance, marriage, divorce, and <i>inter vivos</i> gifts; in cases of short-term acquisitions and excess in threshold (disposed within 12 months) where voting rights are not exercised; in cases of acquisitions made by public-interest foundations, financial intermediaries' firm commitments and security interests; and in cases of certificate issuance arrangements or resolution mechanisms.</p> <p>Finally, the law also foresees that 'this article does not apply in the event of the use of resolution instruments, powers and mechanisms referred to in Book II, Title VIII, Book XI and Book XII, Title II, Chapter VII of the Law of 25 April 2014 on the status and supervision of credit institutions and stock exchange companies'.</p> <p>f. The FSMA is awarded certain powers to ensure compliance with the obligations under its supervision. It can notably take the necessary measures and issue injunctions to ensure compliance. This includes among other things: (1) order the person to comply with its obligations and ensure that it puts an end to any irregularity; (2) prohibit a person responsible for irregularities from benefitting from the rights and benefits resulting from it; (3) require the provision of information and documents; (4) require the execution of some measures; (5) suspend an offer or the publication of an advice for a maximum of ten consecutive business days; (6) prohibit an offer or the publication of an advice; (7) suspend the diffusion of marketing communications and other documents for a maximum of ten consecutive business days; (8) prohibit or order the withdrawal of marketing communications and other documents; (9) order the publication of rectifications to marketing communications and other documents; (10) where applicable, proceed to the publication of the rectifications mentioned above; (11) make public any decision listed, except where such publicity would</p>
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		<p>disturb greatly the financial markets or cause a disproportionate prejudice to the involved parties; (12) make public the fact that a party to the offer does not comply with applicable obligations except where such publicity would disturb greatly the financial markets or cause a disproportionate prejudice to the involved parties; (13) carry out inspections and expert assessments on site, examine and make copies of any documents, files and records on site, and have access to any computer system (except private housing); (14) order any person who is required to proceed to a mandatory offer and who omit to do it, to take the necessary measures; and (15) order to the company, which even if required by law, omits to proceed to a mandatory offer, to take the necessary measures.</p> <p>'To any person who, upon expiry of the period set by the FSMA, fails to comply with an injunction or prohibition issued to them pursuant to section 1, the FSMA may impose a periodic penalty payment which may not exceed €50,000 per calendar day or, for failure to comply with the same injunction or prohibition, €2,500,000'.</p> <p>In case of infringement, the FSMA can impose an administrative fine which cannot be less than €2,500, or more, for the same event or set events, than €2.5m. Criminal sanctions (including fines and imprisonment) are also foreseen in specific cases.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. Other?</p> <p>Please find the answers to each question below:</p> <p>a. On top of general requirements/restrictions applicable to pricing, specific requirements apply to mandatory offers.</p> <p>First, the price of the offer should be equal to the highest of the following: (1) ‘the highest price paid, during the 12 months preceding the announcement of the offer, by the offeror or a person acting in concert with the offeror for the securities concerned’; and (2) ‘the weighted average of the trading prices on the most liquid market for the securities concerned during the 30 calendar days preceding the date on which the obligation to launch a bid arose’.</p> <p>‘In the event of application of Article 51, the highest price referred to in paragraph 1, 1°, shall be determined by taking into account the implicit price of the participation in the target company, included in the price paid for the acquisition of the voting securities of the holding company or the person controlling it’.</p> <p>Specific rules apply to modifications of the price. The law foresees that the FSMA can authorise or require a modification of the price in some circumstances: (1) where transferors have made special commitments about the company’s assets and liabilities (insofar as they are proportionate); (2) where certain elements establish that certain transferors were awarded certain particular direct or indirect advantages beyond the payment; and (3) where it appears that market prices are not meaningful or where false or misleading information on the securities were disseminated.</p>
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		<p>b. Under Belgian law, the offer can be subject to a condition precedent (condition suspensive) with regard to the approval of the European Commission or national competent authorities regarding competition.</p> <p>Where the offer is conditional, the prospectus should indicate the conditions applicable.</p> <p>The FSMA can accept that the start of the offer period can thus be delayed to the approval by the competition authorities.</p> <p>c. The consideration 'may consist of cash, securities or a combination of both'. Some limitations are however also provided by the Royal Decree. Indeed, 'If the price does not consist of liquid securities admitted to trading on a regulated market or if the offeror or a person acting in concert with the offeror has acquired or committed to acquire, during the 12 months preceding the announcement of the offer or during the offer period, securities in exchange for cash, the offeror shall offer, as an alternative, the corresponding price in cash prevailing at the time of the notice announcing the offer'.</p> <p>d. The offer must cover the entirety of the voting securities or securities providing access to voting rights of the company concerned. The procedure as such is also foreseen by the law and applicable Royal Decrees.</p> <p>The law foresees that the person who performed the acquisition which gives rise to an obligation of notification should inform the FSMA within two business days. The offer must be announced within three business days following the event triggering the MTO obligation.</p> <p>Additionally, a series of requirements apply to the offer itself, including the fact that the funds necessary for the offer must be available. The funds must be available either on an account at a credit institution or either as an irrevocable and unconditional credit facility opened with a credit institution.</p>
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<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>In Belgium, a takeover bid shall be made public by the FSMA. As a general rule, nobody should be allowed to make public a takeover bid prior to the FSMA announcement.</p> <p>In case questions are raised within the market as to whether a person intends to launch a takeover bid, the FSMA may request this person to release a statement clarifying its intentions.</p> <p>Two cases can arise:</p> <ol style="list-style-type: none"> 1. On the one hand, if the person does not confirm its intention to launch a takeover bid within the time limit given by the FSMA, it will have to refrain from launching a takeover bid for a period of six months as of the date of the statement or the expiration of the delay granted by the FSMA. This standstill period does not apply in certain specific cases, namely if the concerned person(s) prove a significant change in: (1) the circumstances; (2) the target company's situation; or (3) the shareholding of the concerned persons. 2. On the other hand, if the person confirms its intention to launch a takeover bid, it will have to comply with the obligations imposed on the bidder during the offer period and to submit a takeover file with the FSMA with a period defined by the FSMA. <p>In practice, the put-up or shut-up mechanism is not applied as, in the context of its Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ('MAR') Q&A, the FSMA awaits communication of decisions to make an offer by entities (which derogates to the principle of non-communication until the offer is made and declared acceptable). The FSMA insists on immediate disclosure to the market of an intention to launch a public offer as soon as a firm decision to that extent has been taken.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Brazil

	Which jurisdiction are you covering?	Brazil
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Under Brazilian law, disclosure requirements cover not only direct sales of shares but also the disposal of rights over shares, and derivative contracts involving shares, even when the contract does not stipulate physical settlement. In such cases, the following rules apply:</p> <ol style="list-style-type: none"> 1. directly held shares and those referenced by physically settled derivative contracts must be considered collectively for the purposes of calculating the percentages referred above; 2. the referenced shares by derivative financial instruments in which settlement rights are solely financial must be computed independently of the shares referred to in item 1 for purposes of verifying the percentages mentioned above; 3. the number of shares referenced in derivative instruments that confer economic exposure to the shares cannot be offset against the number of shares referenced in derivative instruments that produce inverse economic effects; and 4. disclosure is not required for instruments such as closed-end funds (COEs), exchange-traded funds (ETFs) and other derivatives where the company's shares represent less than 20 per cent of the instrument's portfolio.

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure?</p> <p>Disclosure must be made immediately after reaching any of the relevant thresholds.</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p> <p>Upon crossing relevant thresholds, disclosure must be made immediately to the company, including detailed information on identity, purpose and ownership structure. If the sale aims to alter control or management, or triggers a mandatory tender offer, a public disclosure must also be issued via the company's usual communication channels, for instance, news portal or widely circulated newspaper.</p> <p>Changes in significant shareholding in a publicly held company in Brazil must generally be disclosed through a notice to the market. However, if the change in shareholding may have a material influence on the price of the securities or on investors' investment decisions, the disclosure may also be required through a material fact.</p> <p>The Brazilian Securities and Exchange Commission Comissão de Valores Mobiliários or (CVM) has launched a public consultation on proposed changes to Resolution 44/21, which are not yet in effect. The draft suggests maintaining immediate disclosure of relevant shareholdings only when the investor intends to influence management or control. In other cases, disclosure could be made within three business days. The proposal aims to reduce compliance costs, and the CVM is currently gathering feedback on the adequacy of the suggested deadline.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>f. NO</p> <p>Item c: There is no requirement that these instruments be exercised or converted within a specific period. The mere existence of the contractual right is sufficient to trigger the obligation to disclose. Additionally, foreign securities/ certificates representing shares traded in Brazil (such as American depositary receipts – ADRs) are also counted towards reaching the applicable threshold.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>f. Other? Cancellation of shares by the company or any event that changes proportional ownership.</p> <p>Any acquisition or sale or event that results in the reaching, exceeding or falling below the thresholds outlined in Article 12 of CVM Resolution No 44/2021 triggers disclosure. This includes acquisitions or sales through market purchases, derivative instruments or acting in concert. Passive changes, such as stock buybacks (<i>recompras</i>), must be disclosed by the Company in its Reference Form (Formulário de Referência); however, there is no requirement or guidance imposing disclosure obligations on shareholders in such cases.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. NO</p> <p>f. NO</p> <p>Under CVM Resolution No 44/2021, particularly Article 12 and sections 1–3, the concept of ownership that triggers disclosure is broad and functionally equivalent to beneficial ownership, encompassing both economic and control-related elements. The regulation embraces a substance-over-form approach: beneficial ownership includes any form of economic interest, voting control or dispositive power.</p>

6.	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Any coordinated behaviour or common interest derived from joint activities</p> <p>b. NO</p> <p>Acting in concert exists when there is an agreement, even if tacit, to exercise voting rights or influence the company's management. A formal agreement is not required. The regulation does not limit the concept to formal partnerships; rather, it emphasises substance over form.</p>
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. YES</p> <p>f. YES</p> <p>g. YES</p> <p>h. YES</p> <p>i. NO</p> <p>If applicable, the disclosure should include a statement affirming that the transactions are not intended to alter the company's control structure or its management.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. NO</p> <p>Controlling shareholders, whether directly or indirectly and shareholders who appoint members to the board of directors or the fiscal council, as well as any individual or legal entity, or group of persons acting in concert or representing a common interest, must promptly submit to the company the required information regarding relevant transactions immediately after reaching the relevant shareholding threshold.</p> <p>In cases where the acquisition is intended to, or results in, a change in control or in the company's management structure, or triggers a mandatory tender offer (MTO) under applicable regulations, the acquiring party must also publicly disclose a notice of material fact – at a minimum through the same communication channels regularly used by the company – containing the information set out in items I to V of the caput of Article 12 of CVM Resolution No 44/21.</p>
9.	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/ short form of disclosure?</p>	<p>a. YES</p> <p>b. YES, however, it depends on the decision-making power of the passive investor regarding negotiating such shares.</p> <p>c. YES</p> <p>Yes. Asset managers and passive investors must disclose their positions when reaching the relevant thresholds. However, if: (1) the investment does not aim to influence control or management (eg, index funds or discretionary portfolios); or (2) the position is held through a non-exclusive investment fund or in which the investor does not have decision-making power, non-immediate disclosures are permitted, as per item 2 above. Disclosure is not required for instruments such as COEs, ETFs and other derivatives where the company's shares represent less than 20 per cent of the instrument's portfolio. The CVM accepts adjustments in content when the investor acts merely as an asset manager, without discretionary powers over voting or control.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. An increase of five per cent in relation to the total number of shares of the same type or class previously disclosed requires new communication.</p> <p>c. A change in the purpose of participation requires new communication, despite the fact that there are no new acquisitions.</p> <p>d. A decrease in shareholding that results in a drop below one of the multiples of five per cent</p> <p>e. The disclosure must be made immediately after the respective acquisition or disposal that results in the relevant change.</p> <p>f. The rule does not impose a legal moratorium on new purchases, but failure to comply with the duty to inform can lead to administrative sanctions.</p> <p>A new disclosure must be made if the shareholding exceeds, either upwards or downwards, the thresholds of five per cent, ten per cent, 15 per cent and so on. Additionally, any change in the investor's declared purpose – such as an intent to influence control or management – also triggers a new disclosure obligation, even without further acquisitions. The disclosure must be made immediately after the threshold is reached or the intent is changed. While there is no legal moratorium on further acquisitions, failure to comply may result in administrative sanctions.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES – Administrative penalties by the CVM, such as warnings, fines, temporary disqualification from serving as an executive or board member of a listed company, suspension of authorisation to operate in the securities market and even prohibition from engaging in certain market activities for up to 20 years.</p> <p>c. YES – Civil liability may apply if third parties are directly harmed.</p> <p>d. NO; however, some bylaws also establish disclosure requirements, including lower percentage thresholds. Failure to comply with such obligations may result in the loss of voting rights, if there is a specific provision in the bylaws.</p> <p>e. YES – Both the CVM and shareholders may take action, in the latter case, especially if there is a specific provision in the bylaws.</p> <p>In Brazil, failure to comply with stake disclosure requirements may lead to administrative sanctions imposed by the CVM, including warnings, fines, temporary disqualification from serving as an executive or board member of a listed company, suspension of authorisation to operate in the securities market and even prohibition from engaging in certain market activities for up to 20 years. Additionally, shareholders or affected third parties may seek damages through civil liability claims, depending on the circumstances. The CVM and private parties both have standing to enforce these rules. Additionally, the failure to comply with disclosure obligations set forth in the bylaws may lead to the suspension of political rights, such as voting rights. In addition, depending on the specific provisions of the bylaws and the circumstances of the breach, the shareholders’ meeting may resolve to suspend not only political rights but also economic rights associated with the shares held by the non-compliant shareholder.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>Please find below an overview of the response to each point:</p> <ul style="list-style-type: none"> a. YES b. YES/Sale of control. c. Voting shares d. Sale of control, including through concerted action e. YES – Opting-up is available, while opting-out is possible only with respect to certain rules, when expressly authorised by the CVM. f. Potential administrative sanctions and other legal sanctions, including civil lawsuits or arbitration proceedings, if an arbitration clause is included in the respective company bylaws. Besides that, failure to launch or complete the MTO may result in the transaction becoming invalid. <p>In Brazil, the sale of control of a publicly held company triggers an obligation for the acquirer to launch a mandatory tender offer (MTO) for all voting shares held by the remaining shareholders. According to Article 254-A of Law No 6.404/76, the sale of control may only be contracted if the acquirer undertakes to make a public offer for the remaining voting shares, ensuring a price of at least 80 per cent of the amount paid per voting share forming part of the control block. The MTO may be subject to suspensive or resolute conditions, as permitted by law, and must comply with formal requirements under CVM regulation. There are pricing restrictions, as the law sets a statutory minimum price (80 per cent) linked to the control premium. Payment may be made in cash or other forms, provided the terms are clearly disclosed and comply with applicable CVM requirements. The CVM may assess the adequacy of the offer and its compliance with minority shareholder protections. It is also worth noting that it is common practice in Brazil for companies to include statutory tag-along rights in their bylaws, which, in most cases, grant minority shareholders the right to sell their shares under the same conditions and at the same price (100 per cent) as those offered to the controlling shareholder in a change-of-control transaction.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES</p> <p>b. YES – Subject to regulatory limits.</p> <p>c. NO – May be in cash or securities, subject to certain requirement.</p> <p>d. Other? NO</p> <p>In Brazil, MTOs are governed primarily by Law No 6.404/1976 (Lei das SA) and CVM Resolution No 85/2022 (to be revoked by CVM Resolution No 215/2024, as of 1 October 2025), which set out clear procedural, pricing, and disclosure requirements. MTOs are typically required in scenarios such as sale of control or delisting. The legal framework aims to ensure transparency, equal treatment, and protection of minority shareholders.</p>
<p>14.</p>	<p>Is there a ‘put up or shut up’ mechanism in your jurisdiction?</p>	<p>There is no formal ‘put up or shut up’ mechanism in Brazilian securities regulation. Brazilian law does not require a potential acquirer who accumulates a significant stake or expresses interest in control to either launch a formal takeover bid within a fixed period or stand down. Enforcement focuses on disclosure, transparency and fairness, rather than timing pressure to force deal-making decisions.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Canada

	Which jurisdiction are you covering?	Canada
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Ten per cent, 12 per cent, 14 per cent, 16 per cent and 18 per cent.</p> <p>Disclosure and filings are required under ‘early warning rules’ when an acquirer acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such acquirer’s securities of that class, would constitute ten per cent or more of the outstanding securities of the class. Subsequent reporting required with acquisition/disposition of two per cent of the class (beneficial ownership, control or direction).</p> <p>The reporting threshold drops to five per cent if a takeover bid or issuer bid has been made for the voting/ equity securities.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>The acquirer must,</p> <ul style="list-style-type: none"> under the early warning rules: (1) promptly issue and file a news release containing the information required by National Instrument 62-103, which may not be later than the business day following the acquisition; and (2) within two business days from the date of acquisition, file an early warning report; and file an insider report within ten days of becoming a ‘reporting insider’ (which includes a ten per cent holder) and subsequently, within five days of any change in beneficial ownership of, control or direction, over securities or interest in a ‘related financial instrument’.

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES, if the non-voting securities are equity securities.</p> <p>c. YES. Deemed post-conversion beneficial ownership of a security, including an unissued security, if the beneficial owner of a security convertible into the security within 60 days or holder has right or obligation permitting or requiring holder, whether or not on conditions, to acquire beneficial ownership of the security within 60 days.</p> <p>d. YES (for insider trade reporting). 'Related financial instrument' (being any agreement, arrangement, or understanding to which an insider of a reporting issuer is a party which alters, directly or indirectly, the insider's economic interest in a security of the reporting issuer or economic exposure to the reporting issuer (eg, derivatives, equity swaps and hedging transactions).</p> <p>e. YES. Borrower of securities that has the right to vote the borrowed securities is subject to the reporting and filing requirements unless the securities loan constitutes a 'specified securities lending arrangement' and certain other conditions are met (eg, borrower disposes of securities within three business days, later acquires same or identical securities and returns to lender, and does not intend to vote the securities during the relevant period).</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES. Securities loans may trigger reporting requirements unless the arrangement is structured as a 'specified securities lending arrangement' and meets certain conditions. See item 3e above.</p> <p>d. YES. Exit report required when ownership falls below ten per cent and/or when there is a change in material fact in previously filed report.</p> <p>e. Exemption for changes arising from issuer action such as a stock buyback or redemptions without any action being taken by the holder.</p> <p>f. Reporting insider is required to file insider trade reports disclosing information about transactions involving a reporting issuer's securities or related financial instruments, as well as supplemental interests.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Early warning reporting requirements are triggered when person acquires beneficial ownership and/or also control or direction (with or without beneficial ownership).</p> <p>a. YES. 'Control or direction' includes investment power (eg, power to acquire or dispose, or to direct the acquisition or disposition of, securities).</p> <p>b. YES. Control or direction includes power to vote, or to direct the voting of, the securities</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES. Deemed post-conversion beneficial ownership (with regard to convertible securities). See item 3c.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>'Acting jointly or in concert' with an offeror is a question of fact.</p> <p>The following are deemed to be to be acting jointly or in concert with an offeror:</p> <ul style="list-style-type: none"> a. if have an agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, to acquire or offer to acquire securities of the same class; and b. an 'affiliate' of the offeror. <p>The following are presumed to be to be acting jointly or in concert with an offeror:</p> <ul style="list-style-type: none"> a. if have an agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, to exercise jointly or in concert with the offeror or any other joint actor any voting rights attaching to the issuer's securities; and b. an 'associate' of the offeror.
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES. Percentage.</p> <p>b. YES. Number and class/type of security.</p> <p>c. NO</p> <p>d. YES. Date of transaction; value, in Canadian dollars of any consideration paid/received per security and in total; market where transaction took place; and method of acquisition or disposition.</p> <p>e. YES. Purpose of transaction and plans or future intentions including re-acquisitions of additional securities or dispositions or which would result in certain material transactions with the issuer (eg, merger, reorganisation or liquidation) or certain material changes to the issuer (board of directors, management, capitalisation, business, corporate structure etc) or a solicitation of proxies from securityholders.</p> <p>f. YES. Material terms of any agreements or understandings including re transfer or voting of securities, finder's fees, joint ventures, loan or option arrangements, guarantees of profits, division of profits or loss, or giving or withholding of proxies.</p> <p>g. NO, provided that the issuer must file each material contract to which the issuer or a subsidiary is a party (subject to exceptions).</p> <p>h. NO, provided that the acquirer/offeror has filed.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES, acquirer/offeror.</p> <p>b. YES, if the offeror acquires beneficial ownership or control or direction.</p> <p>c. NO, provided that acquirer has filed.</p> <p>d. NO</p>

<p>9.</p>	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/ short form of disclosure?</p>	<p>a. YES. Alternative monthly reporting (on Form 62-103F3) is available for 'eligible institutional investors' (EII) (eg, certain types of foreign investments (FIs), pension funds, mutual funds and investment managers) provided that there is: (1) no intention to make a formal takeover bid; (2) no intention to propose reorganisation, merger, business combination and so on which would result in EII having effective control; and (3) no solicitation of proxies. Form may be filed within ten days of end of month of acquisition/disposition (different trigger – every 2.5 per cent, at: ten per cent, 12.5 per cent, 15 per cent and 17.5 per cent).</p> <p>b. YES. The report requires disclosure of the interests held.</p> <p>c. Other exemptions are: (1) 'foreign issuers' (alternative compliance with local requirements); and (2) certain specified securities lending arrangements (ie, borrower disposes of securities within three business days, later acquires same or identical securities and returns to lender, does not intend to vote the securities during the relevant period).</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES. Change in material fact in a previously filed report.</p> <p>b. Acquisition/disposition of two per cent of the class (beneficial ownership, control or direction).</p> <p>c. YES, if the change would constitute a change in a material fact disclosed in previous report.</p> <p>d. Exit report (ownership falls below ten per cent).</p> <p>e. Promptly.</p> <p>f. YES. Moratorium period – further acquisitions of securities of the class are prohibited until one business day after the report is filed.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES, for serious violations of securities law, quasi-criminal sanctions may apply which, in Ontario, include fines up to CAD5m and/or imprisonment up to five years.</p> <p>b. YES. 'Public interest' sanctions may include: (1) cease trade order in relation to bid where early warning breach relates to bid; (2) prohibitions on acting as director/officer; (3) revocation of exemptions relied upon by acquirer; (4) reprimands; and (5) any other order in public interest; and other administrative penalties may include: (1) up to CAD1m; (2) disgorgement of amounts obtained through non-compliance; and (3) costs of investigations/proceedings.</p> <p>c. NO</p> <p>d. NO. But a 'public interest' order by a securities regulator may require divestiture, impose a bar on voting in certain circumstances, and/or corrective and enhanced disclosure of relevant facts.</p> <p>e. There is no statutory private right of action for breach of early warning rules although, if the facts support a tort claim, plaintiff may, in a civil action, plead negligent misrepresentation or deceit tied to market conduct (not specific to early warning rules).</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/ completed?</p>	<p>a. YES. If bid requirements are triggered, the offeror must make a formal takeover bid to all shareholders (subject to exemptions).</p> <p>b. 20 per cent. Where the securities subject to the offer to acquire, together with the offeror's securities (including securities beneficially held and those over which have control or direction), constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities.</p> <p>c. Voting or equity securities.</p> <p>d. Offer to acquire outstanding voting or equity securities. Securities held by joint and concerted actors must be aggregated with offeror's securities to determine whether threshold is reached. Indirect acquisitions of beneficial ownership or control may also trigger the requirements.</p> <p>e. Exemption from mandatory bid requirements: (1) five per cent limit during 12-month rolling period at prices not in excess of 'market price'; or (2) acquisition from no more than five sellers in private transactions for consideration not greater than 115 per cent of 'market price'.</p> <p>f. 'Compliance order' requiring the offeror to make a takeover bid to all holders; and 'public interest' order such as a cease trade order against further acquisitions, order halting the bid (if already under way), director/officer bans and so on, monetary/ remedial sanctions such as administrative penalties of up to CAD1m and disgorgement of profits and costs of investigations/proceedings.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. Price and percentage of shares acquired from any party in a private transaction during the 90 days before a formal takeover bid must constitute the minimum price and percentage of shares sought under the takeover bid.</p> <p>b. YES. Mandatory conditions include: minimum of 50 per cent of outstanding shares must be tendered and not withdrawn; bid must remain open for a minimum of 105 days (or a shorter period agreed to by the target board of not less than 35 days). Other conditions may include: regulatory approvals and financing (provided that the offeror must make adequate arrangements before the bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire).</p> <p>c. NO. The bidder may offer cash or securities or a combination. Bidders may also offer a contingent value right (CVR), which is a right to receive a future payment (either in the form of cash in a cash transaction or additional shares in a share deal) if certain future events occur.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO. There is no specific 'put up or shut up' mechanism. However, securities regulators have the power to issue compliance orders to require non-compliant offerors to, among other things, make a proper bid or cease further acquisitions.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Cayman Islands

	Which jurisdiction are you covering?	Cayman Islands
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>There is no prescribed form for a tender offer in respect of a Cayman Islands-exempted company under the Cayman Islands Companies Act (as revised). The articles of association of the Cayman Islands-exempted company's would dictate any disclosure and MTO requirements, if any.</p> <p>Our responses herein assume the entity in question is not listed on the Cayman Islands Stock Exchange.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	Not applicable – see above.

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>Not applicable – see above.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>Not applicable – see above.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Not applicable – see above.</p>

6.	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	Not applicable – see above.
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	Not applicable – see above.

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	Not applicable – see above.
9.	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/ short form of disclosure?</p>	Not applicable – see above.

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/ purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>Not applicable – see above.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <ul style="list-style-type: none"> a. Criminal sanctions? b. Regulatory sanctions? c. Damages? d. Equitable relief (such as loss of voting rights or requirement to divest)? e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules? 	<p>Not applicable – see above.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/ completed?</p>	<p>Not applicable – see above.</p> <p>However, Cayman Islands law does provide for statutory mechanisms in respect of schemes of arrangements and a squeeze-out of minority shareholders (90 per cent shareholder approval required).</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>Not applicable – see above.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Denmark

	Which jurisdiction are you covering?	Denmark
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>The Danish rules on disclosure requirements for major shareholders are based on the EU Transparency Directive and set out in Chapter 7 of the Danish Capital Markets Act and the executive order on major shareholders (the 'Major Shareholder Executive Order').</p> <p>Under the Danish Capital Markets Act, any natural or legal person who directly or indirectly holds shares, financial instruments (as defined in section 39 of the Danish Capital Markets Act) or a combination thereof in a listed company must notify the company and the Danish Financial Supervisory Authority (the DFSA) when its aggregate holding reaches, exceeds or falls below the following reporting thresholds:</p> <ul style="list-style-type: none"> • five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 50 per cent, 90 per cent, one-third or two-thirds of the voting rights or share capital. <p>In addition, there is a general duty of notification in the Danish Companies Act in respect of notification of significant shareholdings (similar to the thresholds set out in the Danish Capital Markets Act), including when the limit of 100 per cent of the share capital's voting rights or nominal value of the company is reached or are no longer reached. The company shall publish information related to major shareholdings received pursuant to the Danish Companies Act in an electronic public register of shareholders which is kept by the Danish Business Authority.</p>

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. If a relevant reporting threshold is reached or crossed, the natural or legal person must notify the company and the DFSA of the reaching or crossing of the relevant threshold promptly, but not later than four weekdays after the natural or legal person becomes or should have become aware that the transaction has been completed. In any event, the natural or legal person is considered to have become aware of the obligation to notify the company and the DFSA has arisen no later than two weekdays after the transaction.</p> <p>If a relevant reporting threshold is reached or crossed due to the company having disclosed a change in the total number of voting rights or share capital in the company, the natural or legal person must notify the company and the DFSA of the reaching or crossing of the relevant threshold promptly, but not later than four weekdays after the natural or legal person becomes aware that the transaction has been completed.</p> <p>The company shall, upon receipt of a major shareholder notification, publish the content of the notification to the market. This shall take place after receipt of the notification, however, no later than after three weekdays. Simultaneously, the company must file the company announcement with the DFSA.</p> <p>b. There are no formal requirements for the non-public notification to the company; however, the notification must include certain information pursuant to section 15 of the Major Shareholder Executive Order. Reference is made to the answer provided to Question 7.</p> <p>The notification to the DFSA must be done by completing a standard form and submitting it electronically to the DFSA through the DFSA's online IT-system (the 'OAM-system') pursuant to section 14 of the Major Shareholder Executive Order. The standard form itself, which is submitted electronically to the DFSA via the OAM-system, is not made available to the public (non-public disclosure).</p> <p>Where more than one natural or legal person is subject to the notification requirement, a single joint notification may be given, provided that the conditions set out in section 15 of the Major Shareholder Executive Order are met. However, the use of a single joint notification does not exempt natural or legal person from their individual responsibilities regarding the notification requirement or its contents.</p> <p>The company's disclosure to the market is made as a company announcement.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES.</p> <p>b. YES, non-voting shares are counted towards the relevant reporting thresholds in respect of the holding of share capital.</p> <p>c. YES, derivative instruments giving a right to acquire, exercise or dispose existing shares are counted towards the relevant reporting thresholds and there is no requirement for such derivative instruments to be exercised/converted within a specific time period.</p> <p>d. YES.</p> <p>e. YES.</p> <p>f. YES, depositary receipts provided that the depositary has the right to vote in respect of the underlying shares and financial instruments that: (1) give the holder, under a formal agreement, either the unconditional right or the discretion as to their right to acquire shares already issued; and/or (2) are not referred to in item (1) but are based on shares which have economic effect similar to that of the financial instruments referred to in (1), whether or not they confer a right to acquire the shares. Such financial instruments include transferable securities, options, futures, swaps, other contracts or agreements which can be settled physically or in cash and so on.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES, all direct and indirect acquisitions trigger the disclosure obligation. For considerations related to acquisition of beneficial ownership, please refer to our answer provided to Question 5.</p> <p>b. YES, please refer to our answer provided to Question 6.</p> <p>c. YES, securities lending may trigger disclosure if it includes a temporary transfer of the voting rights in question in return for consideration.</p> <p>d. YES.</p> <p>e. YES.</p> <p>f. The Danish Capital Markets Act provides an additional duty to notify for natural or legal persons who are entitled to acquire, sell or exercise voting rights which are:</p> <ul style="list-style-type: none"> • held by a third party with whom that natural or legal person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question (common duty to inform for all parties to the agreement); • held by a third party under an agreement concluded with that natural or legal person providing for the temporary transfer of the voting rights in question in return for consideration; • attached to shares which are lodged as collateral for that natural or legal person, provided the person controls the voting rights and declares an intention of exercising them; • attached to shares in which that natural or legal person has a lifelong right of disposal; • held, or may be exercised within the meaning of the above, by an undertaking controlled by that person or entity; • attached to shares deposited with that natural or legal person and which the person can exercise at its own discretion in the absence of specific instructions from the shareholders; • held by a third party in its own name on behalf of that person; or • exercisable by that person through a proxy where that person may exercise the voting rights at its discretion in the absence of specific instructions of the shareholder.
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. NO.</p> <p>b. YES (see f for further information).</p> <p>c. YES (see f for further information).</p> <p>d. NO.</p> <p>e. NO.</p> <p>f. In relation to major shareholder reporting, beneficial ownership triggers disclosure if a natural or legal person has controlling influence over an undertaking. Any natural or legal person has controlling influence over an undertaking if it: (1) holds the majority of the voting rights; (2) has the right to appoint and remove the majority of the members of the administrative, management or supervisory body in the undertaking; (3) is a shareholder or participant in the subsidiary and alone controls a majority of the shareholders' or participants' voting rights, respectively, pursuant to an agreement entered into with other shareholders or participants in the undertaking; or (4) has the power to exercise or actually exercises controlling influence.</p>
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Forming a group which will trigger a joint major shareholder disclosure under section 38, paragraph 2(1) of the Danish Capital Markets Act requires that an agreement shall oblige the parties to use their voting rights in a coordinated manner to pursue a long-term, joint policy towards the company's management, that is, a coordinated use of voting rights in isolated cases, such as at a general meeting, would not stipulate forming a group.</p> <p>Further, natural and legal persons may also be considered as acting in concert with a bidder or a target company when cooperating according to an agreement (explicit or tacit, oral or in writing) with a view to obtaining control in the target company or obstructing a takeover offer in respect of the target company. If shareholders are considered as acting in concert, such shareholders will also need to flag their joint major shareholding in the target company.</p> <p>The European Securities and Markets Authority (ESMA) has published a 'White List' of accepted activities, under which shareholders will not be deemed to act in concert. According to this list, a shareholder is allowed to generally cooperate and discuss specific matters related to the target with other shareholders on a case-by-case basis to align views, as long as such shareholder continues to act independently and does not increase its shareholding in the target and does not collaborate with other shareholder(s) with a view to enabling such other shareholders to obtain control of the target.</p> <p>b. An agreement/arrangement as described above is required, that is, 'parallel action' is not sufficient.</p>
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7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES.</p> <p>b. YES.</p> <p>c. NO.</p> <p>d. YES, the date on which the threshold was reached or no longer reached but not the price.</p> <p>e. NO.</p> <p>f. YES, when applicable, the Danish disclosure requirements (including the DFSA's standard notification form) entail that a description of the background to the disclosure obligation is included in the disclosure which, for example, can be a description of the arrangement(s) related to acting in concert.</p> <p>g. NO.</p> <p>h. YES.</p> <p>i. See below for a summary of the Danish requirements related to major shareholder notifications.</p> <p>Pursuant to section 15 of the Major Shareholder Executive Order, the notification must contain the following information (in Danish or English):</p> <ul style="list-style-type: none"> • changes with respect to share capital and voting rights, including the proportion held (ie, the change in voting rights or share capital); • division of the voting rights between share classes, if applicable; • information on direct and indirect ownership; • date on which the threshold was reached or no longer reached; • identity of the shareholder; and • chain of controlled undertakings/subsidiaries through which the shares are held, if relevant.
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		<p>For financial instruments, the notification must be supplemented with the following information:</p> <ul style="list-style-type: none"> • identity of the holder of the financial instrument; • name of the issuing company; • maturity or expiration date of the financial instrument; • indication of the time at which the shares are or can be acquired in respect of financial instruments with an exercise period; and • breakdown of the nature of the financial instruments. <p>When the company has received a major shareholder notification, the company must publish the contents of the major shareholder notification to the market as a company announcement and the announcement must be filed with the DFSA.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES, the disclosure obligation applies to the direct/legal owner.</p> <p>b. YES, the disclosure obligation applies to the beneficial owner. Pursuant to section 10 of the Major Shareholder Executive Order, a subsidiary company is exempted from the duty to notify if the notification is carried out by the parent company, noting that the chain of controlled undertakings/subsidiaries must be included. If the parent entity's shareholding is split between two or more controlled undertakings/subsidiaries, the parent entity will generally be obligated to aggregate these holdings. The parent entity is only required to disclose its shareholding when the relevant reporting thresholds are reached, exceeded or no longer reached on an aggregated basis. This means that there may be situations where the subsidiary is subject to major shareholder reporting on its own without the parent entity being subject to reporting.</p> <p>c. YES, if parties are acting in concert, the shares in question shall be included in the shareholding of all parties involved, that is, the same shares can result in a reporting obligation for more than one natural or legal person. Please also refer to our answer to Question 5 regarding what constitutes 'acting in concert' under the Danish rules on notification by major shareholders.</p>

		<p>d. Section 38, paragraph 2 of the Danish Capital Markets Act provides an additional duty to notify for natural or legal persons who are entitled to acquire, sell or exercise voting rights which are:</p> <ul style="list-style-type: none"> • held by a third party with whom that natural or legal person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question (common duty to inform for all parties to the agreement); • held by a third party under an agreement concluded with that natural or legal person providing for the temporary transfer of the voting rights in question in return for consideration; • attached to shares which are lodged as collateral for that natural or legal person, provided the person controls the voting rights and declares an intention of exercising them; • attached to shares in which that natural or legal person has a lifelong right of disposal; • held, or may be exercised within the meaning of the above, by an undertaking controlled by that person or entity; • attached to shares deposited with that natural or legal person and which the person can exercise at its own discretion in the absence of specific instructions from the shareholders; • held by a third party in its own name on behalf of that person; or • exercisable by that person through a proxy where that person may exercise the voting rights at its discretion in the absence of specific instructions of the shareholder. <p>The company is also subject to a disclosure obligation upon having received a major shareholder notification. Accordingly, the company must publish the contents of the major shareholder notification to the market and simultaneously file the company announcement with the DFSA. Please also refer to our answer to Question 2.</p>
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<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. NO, money/asset managers are not subject to the disclosure obligation when managing portfolios on behalf of their clients, unless such money/asset manager controls the voting rights.</p> <p>b. YES, a passive investor must disclose their positions assuming such passive investor directly or indirectly holds shares in the listed company. It is not possible to use a short form.</p> <p>c. Pursuant to sections 6–9 of the Major Shareholder Executive Order, certain specific exemptions from the disclosure obligation apply in respect of, for example, clearing of shares, depositaries, quoting banks, etc. In addition, a subsidiary company is exempted from the duty to notify if the notification is carried out by the parent company (section 10 of the Major Shareholder Executive Order). No short form of disclosure applies under the Danish rules on notification by major shareholders.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES, if the natural or legal person's holding of securities that are counted towards the disclosure thresholds (please refer to the answer provided to Question 3) reaches or crosses any of the relevant reporting thresholds, a new major shareholder notification must be filed. Further, any inaccuracies in a notification must be corrected as soon as possible.</p> <p>b. Increase or decrease in ownership only triggers a new major shareholder notification if the increase or decrease results in any of the relevant reporting thresholds being reached or crossed (please refer to the answer provided to Question 1).</p> <p>c. N/A (the trigger is not a change in intent/purpose).</p> <p>d. N/A</p> <p>e. The natural or legal person must notify both the company and the DFSA of the reaching or crossing of the relevant reporting threshold promptly, but not later than four weekdays after the natural or legal person becomes or should have become aware that the transaction has been completed, that is, the same deadlines apply as for the initial filing of a major shareholder notification (please also refer to our answer to Question 2a).</p> <p>When the company receives a major shareholder notification from a natural or legal person, the company must, within three weekdays publish the contents of the major shareholder notification to the market. Simultaneously, the company must file the company announcement with the DFSA. Please also refer to the answer to Question 2a.</p> <p>f. NO.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES, if a natural or legal person fails to disclose its holdings in accordance with the requirements pursuant to the Danish rules on notification by major shareholders, a natural or legal person may be liable for a fine. Fines are in practice limited in size with an indicated level in the amount of DKK 15,000 for the first offence. The fine may be increased in situations of gross violations and for repeat offenders.</p> <p>If the company fails to comply with its obligation to publish the contents of the major shareholder notification received and to simultaneously file the company announcement with the DFSA, the company may also be liable for a fine. The preparatory works to the Danish Capital Markets Act state that, as a general rule, the fine for such violation is expected to be set at DKK 50,000 for the first offence.</p> <p>b. YES, the DFSA has the power to suspend the natural or legal person's voting rights attached to the shares in case of gross violations and for repeat offenders.</p> <p>Further, if a natural or legal person fails to comply with its disclosure obligation, the DFSA may issue a reprimand or an order requiring the natural or legal person to rectify the unlawful conduct. The DFSA may impose coercive fines if the natural or legal person fails to comply with orders. These regulatory sanctions may also be imposed by the DFSA on the company if the company fails to comply with its disclosure obligation after having received a major shareholder notification from a natural or legal person.</p> <p>c. NO.</p> <p>d. YES, as stated above the DFSA has the power to suspend the natural or legal person's voting rights attached to the shares in case of gross violations and for repeat offenders.</p> <p>e. NO, only the DFSA has the power to enforce the Danish rules on notification by major shareholders.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES, under Danish law there is an obligation to submit an MTO upon satisfaction of certain requirements. The Danish rules on takeovers are based on the EU Takeover Directive and set out in Chapter 8 of the Danish Capital Markets Act and the executive order on takeover bids.</p> <p>b. YES, pursuant to section 45 of the Danish Capital Markets Act, an MTO is triggered if two requirements are satisfied: (1) a shareholding is acquired, directly; or indirectly, by a person or persons acting in concert and (2) as a result of such acquisition, the person or persons obtain(s) a 'controlling influence' in the target company. As a general rule, 'controlling influence' is reached upon obtaining at least one-third of the voting rights in the target company, unless it can be clearly demonstrated that such ownership does not constitute actual control, for example, if another shareholder holds even more voting rights than the acquirer. Further, control exists if a shareholder has: (1) the right to control at least one-third of the voting rights by virtue of an agreement; or (2) the right to appoint or dismiss the majority of the members of the target company's board of directors.</p> <p>c. Under Danish law, it is not the 'type of instrument/securities' that triggers an MTO, but an assessment of whether a person or persons acting in concert obtains controlling influence. Reference is also made to subsection a–b and d–e.</p> <p>d. All types of acquisitions may trigger the MTO requirement (provided that 'controlling influence' is obtained), including transfer of existing shares, issue of new shares, ordinary trade, exchange of convertible debt instruments, exercise of subscription rights, options or warrants, acquisition of beneficial ownership, acting in concert and so on. Control obtained through non-actions, for example, as a result of the target company's purchase of own shares, a share buy-back programme or share capital decrease, will generally not trigger an obligation to submit an MTO, unless such action by the target company is due to the influence of the shareholder obtaining control as a result of such action.</p>
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		<p>e. YES, pursuant to section 46 of the Danish Capital Markets Act, the obligation to submit an MTO does not apply in certain clearly defined cases:</p> <ol style="list-style-type: none"> 1. exemption if the bidder has acquired at least half of the voting rights in the target company following a voluntary takeover offer to all shareholders with respect to all outstanding shares, which satisfies all statutory requirements; 2. exemption for obtaining control as a result of inheritance, creditor enforcement or transfers within the same group; and 3. exemption for obtaining control as part of an underwriting agreement in connection with an issue of shares or as part of an agreement with the target company or one or more shareholders to resell the shares in question, provided that the shares are resold within five working days and provided that the voting rights are not exercised or in any other way used to intervene in the management of the target company during this period. <p>In addition to the exemptions set out above, the DFSA has broad authority to grant exemptions from the MTO requirement if special circumstances exist, which historically has been used in connection with companies in financial distress.</p> <p>f. Non-compliance with the obligation to launch/ complete an MTO may be sanctioned by the DFSA by imposing a fine, the amount of which will be determined on a case-by-case basis. In addition, the minority shareholders may initiate civil proceedings against the shareholder, who has not complied with the takeover rules. If, following court proceedings, a court decides that a major shareholder has indeed obtained control in accordance with the takeover rules, then such shareholder will be required to make an MTO to the minority shareholders.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES, the consideration offered by a bidder in respect of an MTO must at a minimum correspond to the highest consideration paid by the bidder, or person(s) acting in concert with the bidder, for the shares already acquired in the target company during the six months (or in special cases 12 months) preceding the MTO.</p> <p>Further, the bidder is required to observe the principle of equal shareholder treatment: (1) the offered consideration must be the same for all shareholders holding the same class of shares (principle of equal treatment); and (2) during the offer period, the bidder is required to increase the consideration offered to the shareholders in the offer if the bidder, or persons acting in concert with the bidder, acquire(s) shares in the target company or enter(s) into agreements with shareholders or others concerning sale or purchase of shares in the target company on more favourable terms than those offered to the shareholders of the target company in the offer document.</p> <p>Similarly, a six-month ‘cool-down’ period applies, that is, if the bidder acquires shares at a higher price than in the offer during a period of six months after completion of the offer, the bidder shall compensate the shareholders who accepted the offer.</p> <p>b. NO, an MTO cannot be made conditional, unless an exemption is extraordinarily granted by the DFSA.</p> <p>c. NO, the bidder is required to offer consideration in the form of cash, voting shares or a combination thereof. Voting shares offered as consideration in an MTO shall be shares with a certain liquidity, which generally is deemed to be the case if the shares are listed on a (Danish or foreign) stock exchange. If shares offered as consideration are not deemed to have sufficient liquidity, the bidder will be required to offer cash consideration as an alternative. If the bidder has accumulated more than five per cent of the voting rights in the target company against cash payment within six months preceding the expiry of the offer period, the MTO shall include a cash consideration option. The bidder always has the option to solely offer cash as consideration.</p> <p>d. Other selected key features of MTOs in a Danish context include:</p> <ul style="list-style-type: none"> • Board statement: The board of directors of the target company is obliged to disclose a statement within
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		<p>the first half of the initial offer period setting out its opinion of the takeover offer and the reasons for such opinion, including the offered considerations, any conflicts of interest, the advantages and disadvantages of the offer and so on. The board of directors may remain neutral in its recommendation as to whether to accept to MTO. The board statement is typically backed by an independent fairness opinion on the offered consideration.</p> <ul style="list-style-type: none"> • Offer document: An offer document approved by the DFSA must be published no later than four weeks after the obligation to submit an MTO was triggered. • Offer period: Minimum four weeks and up to ten weeks. The offer period may be extended with at least 14 days at a time. The offer period may be extended beyond ten weeks up to a maximum of nine months if it is due to obtaining public approvals (anti-trust clearance, foreign direct investment approvals etc) required to complete the offer. If a competing offer is made, the offer period will have to be extended until the expiry of the competing offer (unless withdrawn). • Certainty of funds: The Danish takeover rules require that a bidder, prior to announcement of the bid, has ensured that the bidder can fulfill its financial obligations in the offer. • Takeover defences: In respect of takeover defences, a distinctive feature of Danish company law is that voting ceilings and differentiation in voting rights are allowed and by implementing such, a listed company can access additional capital through the stock market, while at the same time making them less vulnerable to takeover attempts as such structure allows a major shareholder to maintain a certain level of control.
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		<ul style="list-style-type: none"> • Squeeze-out: If the bidder (through one entity) owns >90 per cent of the total share capital and votes of the target company (excluding treasury shares), the bidder may initiate a compulsory redemption (squeeze-out) of the remaining shareholders. • Delisting: <ul style="list-style-type: none"> – If the bidder has the option to squeeze-out the minority shareholders, Nasdaq Copenhagen will remove the target company's shares from Nasdaq Copenhagen upon request from the issuer regardless of whether compulsory redemption is sought. – If the bidder does not have the option to squeeze-out the minority shareholders, Nasdaq Copenhagen will remove the target company's shares from Nasdaq Copenhagen upon request from the issuer if the following conditions are met: <ol style="list-style-type: none"> 1. a resolution by the general meeting of the target company to remove the target company's shares from trading has been adopted by at least 90 per cent of the votes cast as well as at least 90 per cent of the share capital represented; 2. a notice to convene the general meeting of the target company has been disclosed setting out the proposed resolution to remove the shares from Nasdaq Copenhagen, including a description of the consequences that the removal of shares from trading may have for the shareholders and the terms of the offer (see below); and 3. the shareholders are offered the ability to dispose their shares against a 'reasonable level of compensation' in the target company for a period of at least four weeks.
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	No, a 'put up or shut up' mechanism does not exist under Danish law.

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Finland

	Which jurisdiction are you covering?	Finland
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	According to Chapter 9 of the Finnish Securities Markets Act (746/2012, as amended), which implements the Transparency Directive (2004/109/EC), an investor shall notify the issuer and the Finnish Financial Supervisory Authority (FIN-FSA) its holdings and proportion of voting rights when its direct or indirect holdings of shares or voting rights reach, exceed or fall below five, ten, 15, 20, 25, 30, 50 or 90 per cent or two-thirds.
2.	How soon after crossing the level/threshold and in what form is the disclosure required to be made? a. Deadline for disclosure? b. Form of disclosure: press release, form filing, insider report, etc?	<p>a. A notification of major holdings must be made without undue delay, but no later than the next trading day after the investor has learned or should have learned of the transaction leading to the breach of a threshold for notifications of major holdings. The investor is deemed to have learned of said transaction no later than two trading days after the transaction. The deadline pursuant to Finnish Securities Market Act is therefore stricter than the deadline provided in the Transparency Directive, which states that the notification shall be made no later than four trading days after the investor has learned or should have learned of the transaction leading to the breach of a flagging threshold.</p> <p>b. The notification shall be made in writing using the standard notification form and sent to the issuer and the FIN-FSA (at liputukset@finanssivalvonta.fi). The issuer shall publish the notification without undue delay by way of a stock exchange release (issuers listed on a regulated market) or company release (issuers listed on a small and medium-sized enterprise (SME) growth market).</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES. Unless the instruments give right to new shares to be issued only, in which case the instruments are out of scope. There are no specific requirements regarding the exercisability or convertibility period. Applies to both cash-settled and physically settled derivatives. Netting of short positions under derivatives against long positions is not allowed.</p> <p>d. YES. Applies to both cash-settled and physically settled derivatives. Netting of short positions under derivatives against long positions is not allowed.</p> <p>e. YES</p> <p>f. Voting rights exercisable by the investor by virtue of certain arrangements count towards the total proportion of voting rights held by the investor. This includes, among others and subject to certain conditions, voting rights subject to a vote pooling agreement, voting rights attached to shares held as collateral and voting rights exercisable by virtue of a power of attorney.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. NO. Acting in concert (as defined under takeover rules) does not, in itself, trigger a notification of major holdings. However, various other aggregation rules may, depending on the circumstances, result in the notification obligation being triggered.</p> <p>c. YES/NO. Short positions through derivatives do not trigger a notification, whereas a long position does.</p> <p>d. YES</p> <p>e. YES</p> <p>f. A notification of major holdings must also be made when the total amount of a shareholder's holdings or voting rights and the holdings based on financial instruments, on an aggregate basis, reaches, exceeds or falls below a notification threshold. The threshold is calculated separately for three 'baskets', being holdings of shares and voting rights, holdings through financial instruments and their sum total. Therefore, for example, an exercise of financial instruments and the consequent receipt of the underlying shares can trigger a notification even though the sum total may not change.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Any and all of a, b and c, because:</p> <ul style="list-style-type: none"> • The notification obligation covers both direct holdings and indirect holdings through controlled entities. • The thresholds are calculated both on a group level (aggregating the holdings of all controlled entities) and on an entity level. Therefore, for example, a transfer of shares from one subsidiary to another subsidiary of the same parent can trigger the notification obligation even though the aggregate holdings on a group level may not change. • The threshold is calculated separately for three 'baskets', being holdings of shares and voting rights, holdings through financial instruments and their sum total.

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. There are differing criteria under takeover rules and rules governing disclosure of major holdings:</p> <ul style="list-style-type: none"> • For the purposes of takeover rules, acting in concert is defined as natural persons or legal entities acting in concert, whether pursuant to an agreement or otherwise, with a shareholder, offeror or the target company, for the purpose of either exercising or acquiring a significant influence in the target company or frustrating a public tender offer. Controlled entities are deemed to act in concert with the parent. • For the purposes of calculating whether a disclosure threshold has been breached under the rules governing disclosures of major holdings, the aggregation rules discussed under earlier answers apply. For example, voting rights subject to a vote pooling agreement count towards voting rights held by all parties to the vote pooling agreement (being an agreement which obliges the parties to vote the shares in a concerted manner, thereby adopting a lasting common policy towards the management of the issuer). <p>b.</p> <ul style="list-style-type: none"> • For the purposes of takeover rules, acting in concert can be based either on an explicit agreement or otherwise (without a written agreement) on the basis of a mutual understanding. Agreeing to vote in a certain way on an individual general meeting decision, such as the appointment of board members, or participation in the work of a nomination committee consisting of shareholders or shareholder representatives, does not usually constitute acting in concert under the tender offer rules. However, agreeing to vote on an individual general meeting decision when the decision has significant long-term effects on the target company or its ownership and voting rights structure may constitute acting in concert under the tender offer rules. • For the purposes of disclosures of major holdings, both written and oral agreements are taken into account.
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES. However, not where the notification is made due to the holding falling under five per cent.</p> <p>c. NO</p> <p>d. YES (date); NO (price). In addition, the basis for the notification is required. The notification must provide a breakdown of instruments held and the chain of control through which instruments are held. For derivative instruments, the breakdown shall provide, on a per-instrument basis, a description of the instrument and its maturity, exercise period and method of settlement (cash or in-kind) in addition to the number and percentage of shares and voting rights pursuant to the instrument. A free-form description of assignments of voting rights (eg, by power of attorney) is also required.</p> <p>e. NO</p> <p>f. YES, in some cases. If indirectly held voting rights are based on a proxy, information on the expiry date of the proxy and the number and percentage of voting rights covered by the proxy should be provided. In addition, the investor may provide additional information where necessary, but that is not required. If a disclosure threshold is reached, exceeded or fallen below, for example, as a result of a vote pooling arrangement, provision of additional information on the agreement may be necessary.</p> <p>g. NO</p> <p>h. YES (controlled entities as defined under Question 5); NO (persons acting in concert solely for the purposes of takeover rules as defined in Question 6a, unless any of the aggregation under rules governing disclosures of major holdings is triggered).</p> <p>i. Full chain of controlled companies/undertakings through which the voting rights and/or the financial instruments are effectively held starting from the ultimate controlling natural person or legal entity.</p>
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8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES. The direct/legal owner does not need to make a separate notification where a notification is made by its parent.</p> <p>b. YES</p> <p>c. NO. (In case of controlled entities, it is sufficient that the ultimate parent makes the disclosure on behalf of involved parties. On the other hand, parties acting in concert for the purposes of the takeover rules are not as such required to disclose their holdings under the rules governing disclosures of major holdings, see Question 7h above for details).</p> <p>d. Any person directly or indirectly holding shares or voting rights upon reaching, exceeding or falling below a disclosure threshold.</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES, subject to exemptions (see point c). Only one form exists, there is no separate short form.</p> <p>b. YES. Only one form exists, there is no separate short form.</p> <p>c. According to the Finnish Securities Markets Act, the disclosure obligation shall not apply to:</p> <ol style="list-style-type: none"> 1. shares acquired for sole purpose of clearing and settlement for up to four trading days or to custodians holding shares in their capacity as custodian, provided that such custodians can only exercise the voting rights attached to such shares under instructions given; 2. shares held by a credit institution or investment firm in its trading book, provided that the proportion of the voting rights or holdings held in the trading book does not exceed five per cent and the voting rights attached are not exercised or otherwise used to intervene in the management of the issuer; and 3. shares acquired for stabilisation purposes in compliance with the EU Market Abuse Regulation, provided that the voting rights attached are not exercised or otherwise used to intervene in the management of the issuer. <p>In addition, there are certain partial exemptions for parent companies of fund managers and investment firms as well as for the market makers.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES. The notification has to be made every time holdings of shares and/or voting rights reach, exceed or fall below a relevant threshold.</p> <p>b. When the holdings of shares or voting rights reach, exceed or fall below five, ten, 15, 20, 25, 30, 50 or 90 per cent, or two-thirds.</p> <p>c. N/A</p> <p>d. A transfer of shares from one subsidiary to another subsidiary of the same parent can trigger the notification obligation, even though the aggregate holdings on a group level may not change.</p> <p>e. Revised disclosure notifications must be filed without undue delay, but no later than the next trading day after the investor has learned or should have learned of the transaction leading to the breach of a threshold for notifications of major holdings. The shareholder is deemed to have learned of said transaction no later than two trading days after the transaction.</p> <p>f. NO</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. In case of severe violations, even criminal sanctions may be possible. Failing to provide information required under the Finnish Securities Markets Act wilfully or through gross negligence is criminalised as an information offence concerning securities market, provided that the information not provided has the propensity to significantly impact the value of a security.</p> <p>b. YES. The FIN-FSA may impose a penalty payment on any person or entity who fails to comply with or violates the disclosure obligations set out in the Finnish Securities Markets Act. In addition, the FIN-FSA may impose an administrative fine for non-compliance with the language requirements (Finnish, Swedish or language customary in international financial markets (English)) applicable to notifications of major holdings, as provided under the Finnish Securities Markets Act.</p> <p>c. YES. Anyone who wilfully or through negligence causes damage to another person by violating the Finnish Securities Markets Act, including the provisions on disclosures of major holdings, shall be liable to compensate the injured party for the damage caused. Establishing liability for failures to disclose major holdings may be challenging in practice, as injured parties must satisfy the burden of proving that the failure to disclose directly caused their losses.</p> <p>d. YES. The FIN-FSA may, for compelling reasons, prohibit a person or entity who violates the disclosure obligation under the Finnish Securities Markets Act from exercising voting rights in and being represented at the general meeting of the relevant issuer. The prohibition remains in effect until the disclosure obligation has been fulfilled, unless the FIN-FSA, for a particularly compelling reason, extends the prohibition for a fixed period not exceeding three months.</p> <p>e. YES. While the regulator (FIN-FSA) solely has the power to enforce rules concerning stake disclosure requirements, private parties harmed due to failure to disclose may bring forth claims for damages.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES. The provisions concerning mandatory tender offers (MTO) in Finland are included in Chapter 11 of the Finnish Securities Markets Act (746/2012, as amended), which implements the Takeover Directive (2004/25/EC).</p> <p>b. Proportion of voting rights increasing to over 30 per cent or to over 50 per cent of total voting rights in the issuer.</p> <p>c. Voting rights attached to the shares.</p> <p>d. When determining the proportion of voting rights, the following are taken into account: (1) the shares held by the shareholder; (2) shares held by persons acting in concert with the shareholder; (3) the shares held by the shareholder or by the persons acting in concert with the shareholder jointly with another person; and (4) the shares the proportion of voting rights attached to which the shareholder is entitled to use or direct under a contract or other arrangement.</p> <p>e. YES. The exceptions under the Finnish Securities Markets Act are described below. An MTO is not required if:</p> <ol style="list-style-type: none"> 1. the threshold is exceeded through or during the pendency of a voluntary tender offer made for all shares and equity securities of the issuer; 2. there is another shareholder in the issuer whose proportion of voting rights exceeds the MTO threshold until the proportion of that shareholder is exceeded; 3. if the exceeding of the threshold results solely from measures taken by the issuer or by another, until the shareholder acquires or subscribes for further shares in the issuer or otherwise increases its proportion of voting rights in the issuer; or 4. if the exceeding of the threshold results from acting in concert upon launching a voluntary tender offer for the issuer, provided that the acting in concert is restricted solely to the launching of the tender offer.
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		<p>Furthermore, the obligation to launch an MTO lapses if the party obliged to launch an MTO, within one month from triggering the obligation, disposes of shares in the issuer or otherwise reduces its proportion of voting rights in the issuer to below the MTO threshold. In order to be exempted from the obligation to launch an MTO, the party under the obligation and the persons acting in concert may not, during that time, exercise voting rights in the issuer. The party obliged to launch an MTO shall, in addition, make public its intention to make use of this exemption. Information on the falling of the proportion of voting rights below the threshold shall be made public without delay.</p> <p>For particular reasons, the FIN-FSA may also grant an exemption from the obligation to launch an MTO. An exemption may be sought from the FIN-FSA already before exceeding a proportion of voting rights giving rise to the obligation to launch an MTO.</p> <p>f. The FIN-FSA may impose a penalty payment in case an MTO is not launched in accordance with the provisions of the Finnish Securities Markets Act. In addition, the FIN-FSA may impose a conditional fine to enforce the obligation to launch an MTO. Furthermore, a person who has been caused damages due to failure to launch an MTO has the right to claim damages.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. The consideration shall be an equitable price. The starting point for determining the equitable price is the highest price paid for the shares subject to the tender offer during the six months preceding the obligation to launch the offer, either by the party under the obligation or by a person acting in concert. If no such acquisitions have taken place within that six-month period, the equitable price is deemed to be the volume-weighted average trading price of the shares during the three months preceding the obligation to launch the offer.</p> <p>b. If the party launching an MTO (or a person acting in concert) acquires shares on more favourable terms than those of the offer during the offer period, the offer price must be increased to match those more favourable terms. If such an acquisition occurs within nine months after the offer period has closed, shareholders who accepted the offer must be compensated for the difference.</p> <p>c. NO, except that an MTO may be conditional on the receipt of necessary authority approvals.</p> <p>d. YES, cash consideration is required, but consideration in the form of securities or as a combination of securities and cash may be offered as an alternative to a cash consideration.</p> <p>e. Some companies may have provisions in their articles of association requiring mandatory redemption of other shareholders' shares at a certain price, which might conflict with the statutory provisions and thereby cause additional considerations in relation to a mandatory offer.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>YES. The FIN-FSA may, upon application by the board of directors of the target company, set a deadline for a person who has expressed an intention to launch a tender offer, either by contacting the target company or its shareholders, or by making public statements, to either make a public tender offer or announce that no offer will be made. If the tender offer is not made by the set deadline or the person announces they will not make a tender offer, they (and any parties acting in concert) are prevented from launching a tender offer for six months, unless another party makes a competing tender offer in the meantime.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for France

	Which jurisdiction are you covering?	France
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	The first threshold starts at five per cent, and then ten per cent, 20 per cent, 25 per cent, 30 per cent – which is the MTO trigger – 33.33 per cent, 50 per cent, 66.67 per cent, 90 per cent and 95 per cent either in share capital or in voting rights. Below five per cent and between the legal thresholds, an issuer may also impose additional thresholds in its by-laws (usually at every one per cent). Note that, for purpose of calculating such percentages, all theoretical voting rights of the issuer are taken into account, even the voting rights that cannot be exercised (such as voting rights attached to treasury shares). This theoretical number of voting rights is published by the issuer on a monthly basis.
2.	How soon after crossing the level/threshold and in what form is the disclosure required to be made? a. Deadline for disclosure? b. Form of disclosure: press release, form filing, insider report, etc?	a. Disclosure to the issuer and the Autorité des marchés financiers (AMF) (which is made public), is required within four trading days from the event that triggered the threshold crossing. b. Form filing on the basis of which the AMF publishes the information about the threshold crossing (without, however, the AMF checking the information contained in the form).

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES (only when calculating the threshold in capital).</p> <p>c. YES (no specific time period, but for options, if an option can only be exercised if the market price reaches a certain level, the underlying shares are taken into account only if and when such level is reached).</p> <p>d. YES, for the purpose of threshold calculations, not only physically settled derivatives but also cash-settled instruments (such as contracts for difference (CFDs) and total return swaps) are assimilated to ownership, with the number of shares calculated by multiplying the notional amount of underlying shares by the delta of the financial instrument.</p> <p>e. YES, see f below.</p> <p>f. Applicable rules provide for other cases of assimilation to the ownership of securities by a person:</p> <ol style="list-style-type: none"> 1. shares or voting rights held by other persons on behalf of this person; 2. shares or voting rights held by companies controlled by this person; 3. shares or voting rights held by a third party with whom this person is acting in concert; 4. shares of which this person has the usufruct; 5. shares or voting rights held by a third party with whom this person has entered into a temporary transfer agreement concerning these shares or voting rights; 6. shares deposited with this person, provided that the latter may exercise the voting rights attached to them at their discretion in the absence of specific instructions from the shareholders; and 7. voting rights that this person may freely exercise by virtue of a proxy in the absence of specific instructions from the relevant shareholders.
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES, through a list of assimilation to ownership, see Questions 3 and 5.</p> <p>b. YES</p> <p>c. YES, it being specified that with regard to short positions, a specific reporting obligation applies under Regulation (EU) No 236/2012 on short selling. Net short positions must be reported by the holder of the position to the AMF when exceeding (or falling below) 0.1 per cent of the share capital, and at each 0.1 per cent threshold thereafter. Once the net short position exceeds 0.5 per cent of the share capital, the AMF makes the position public.</p> <p>d. YES</p> <p>e. YES</p> <p>f. Any event resulting in an acquisition, such as succession, donation, merger, demerger, contribution and so on</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>f. Beneficial ownership for the purpose of the stakebuilding disclosure, is dealt with through a list of assimilations to the ownership of securities which captures various manners to benefit from the share capital and/or voting rights in an issuer. Please refer to Question 3.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Applicable law defines the action in concert as follows: 'Are considered acting in concert persons who have entered into an agreement to acquire, dispose of or exercise voting rights, to implement a common policy vis-à-vis the company or to gain control of this company'. In the context of a tender offer, applicable law specified that 'are [also] considered as acting in concert persons that concluded an agreement with the offeror aiming at obtaining the control of the target company' ('offensive concert') or who have entered into an agreement with the company targeted by the offer in order to thwart the offer ('defensive concert').</p> <p>b. Applicable rules require an agreement between the relevant parties in order to characterise an action in concert, which, under French civil law, may be either written or unwritten. Thus, the existence of such an agreement may simply result from a declaration from the persons acting in concert, or be inferred from a combination of factors, such as the intentions, parallel behaviours or statements of the parties. The assessment made by the courts is based on a bundle of indicators revealing that such an agreement exists de facto.</p> <p>Pursuant to the French Commercial Code, an action in concert is also presumed between:</p> <ol style="list-style-type: none"> 1. a company and the chairman of the board of directors, the CEO and the members of the management board; 2. a company and the companies it controls within the meaning given to 'control' under the French Commercial Code; 3. companies controlled by the same person(s); 4. the shareholders of a simplified joint stock company (<i>société par actions simplifiée</i>) with respect to the companies such a company controls; and 5. the trustee (<i>fiduciaire</i>) and the beneficiary of a trust agreement (<i>fiducie</i>), where the beneficiary is the settlor.
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES, but only in the event of a declaration of intent, that is, when crossing any of the ten per cent, 15 per cent, 20 per cent and 25 per cent thresholds. See e below.</p> <p>d. YES. The manner of acquisition shall be described: off-market purchase, on-market purchase, purchase as part of a tender offer, subscription to a capital increase, grant of double voting rights, passive threshold crossing, merger, demerger and so on (however, it is not necessary to disclose the purchase price).</p> <p>e. YES, when crossing any of the ten per cent, 15 per cent, 20 per cent and 25 per cent thresholds. The disclosure statement includes, <i>inter alia</i>, intentions for the next six months regarding, especially:</p> <ol style="list-style-type: none"> 1. the methods of financing the acquisition and its terms; in particular, it must be specified whether the acquisition is financed by own funds or debt, the main terms of the debt, and, where applicable, the main guarantees granted by or received by the declarant, as well as any shareholding obtained through securities lending; 2. whether the acquirer intends to cease or continue their purchases and, as the case may be, acquire the control of the issuer; 3. whether the shareholder is acting alone or in concert with others; 4. the strategy the shareholder envisages for the issuer as well as the contemplated transactions to implement it, in particular: any proposed merger, reorganisation, liquidation, or transfer of a substantial part of the assets of the issuer or of any person it controls; and 5. any appointments the shareholder intends to request to the management body. In the event of a change in intent, the statement must be updated 'without delay'.
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		<p>f. YES, (1) any clause of a shareholders' agreement including a preferential right to acquire shares exceeding 0.5 per cent of the share capital of the issuer (such as first offer of refusal right, call option etc) must be disclosed to the AMF (which make them public) within five trading days; and (2) if an action in concert results from a shareholder agreement, such agreement must be attached to the statement if it has not already made public.</p> <p>g. YES, see f.</p> <p>h. YES</p> <p>i. Information shall also be given on:</p> <ol style="list-style-type: none"> 1. the number of securities the person holds that will eventually give access to shares to be issued and the voting rights attached thereto; and 2. the shares and voting rights already issued that this person may acquire, pursuant to an agreement or a financial instrument.
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES, it being specified that for the sake of simplicity, a controlled entity is exempt from disclosing a threshold crossing provided that its controlling entity declares the crossing.</p> <p>b. YES, see above (the identity of the person who, at the highest level, controls the entity which crosses the threshold(s) must at least be mentioned in the disclosure statement) and see Question 3.</p> <p>c. YES, all the concert parties shall declare the threshold crossing (and in addition to the threshold crossed by the concert, the stake of each party shall be disclosed).</p> <p>d. Market participants in some cases.</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES (see the exemptions below).</p> <p>b. YES (no short form, no exemption)</p> <p>c. Various exemptions resulting mainly from European law, applicable to market participants, in particular:</p> <ul style="list-style-type: none"> • exemption applicable to market makers as part of the acquisition or disposal of a holding reaching or crossing the five per cent threshold acting in their capacity of market makers, as long as attached voting rights are not exercised or otherwise used to intervene in the management of the issuer; • exemption applicable to activities related to compensation, clearing and settlement; • exemption applicable to custodians; • exemption applicable to shares held in the trading book of investment firms as long as such shares do not exceed five per cent and the voting rights attached to such shares are not exercised or otherwise used to intervene in the management of the issuer ('trading exception'); • exemption applicable to EU central banks for securities held in the course of their activities as monetary authorities; • exemption applicable to securities held as part of stabilisation activities.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/ purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. A new disclosure statement must be filed once the upper (or lower) threshold is crossed (which is not, strictly speaking, a 'revision').</p> <p>c. In the event of a change in intent during the six-month period after disclosure of a previous declaration of intent, the shareholder must file a revised disclosure statement regarding its intentions, irrespective of any further purchases.</p> <p>d. NO</p> <p>e. In the event of a change of intent as describe above, the revised disclosure statement must be filed without delay. In the event a new disclosure statement is made as a result of a new threshold crossing, it must be filed within five trading days of the execution of the transaction.</p> <p>f. NO. However, if a shareholder declares that it does not intend to purchase additional shares, then it should refrain from doing so for the sake of consistency; however, this is not a legal moratorium.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES (up to €18,000 fine against the directors and officers of the declarant in default).</p> <p>b. YES (including injunction, fine against the declarant in default and/or its officers up to a maximum of €100m and publication of the decision).</p> <p>c. YES (theoretically, in the event that failure to disclose a threshold crossing causes harm to someone seeking compensation).</p> <p>d. YES. Automatic deprivation of the voting rights attached to the portion of shares that has not been duly declared until the expiry of a period of two years following the date on which the notification is regularised (which is a highly deterrent sanction). A judge, upon request by the issuer's chair, any shareholder or the AMF, may extend this sanction by: (1) increasing the period to five years; and/or (2) extending the deprivation of voting rights to all shares held by the shareholder in default (see e below).</p> <p>Someone having an interest may theoretically ask the AMF for an injunction, or in the event failure to disclose threshold crossing causes harm to someone, such person may seek compensation before a court.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/ opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. 30 per cent of the share capital or the voting rights. Also, if a shareholder already holds between 30 per cent and 50 per cent of the share capital or voting rights, any increase in its shareholding by more than one per cent of the share capital or voting rights within a period of less than 12 consecutive months triggers the obligation to file an MTO.</p> <p>In addition to MTO, the concept of ‘buyout offer’ exists in certain situations:</p> <ol style="list-style-type: none"> 1. When one or more majority shareholders, acting in concert, hold at least 90 per cent of the share capital or voting rights of an issuer, a minority shareholder may request the AMF to require the majority shareholder(s) to file a draft public buyout offer; 2. When the shareholder(s) holding control of an issuer decide to transform the company into a certain form (‘commandite par actions’), such shareholder(s) shall file a buyout offer for the company; 3. The AMF may request that the shareholder(s) holding control of an issuer file a buyout offer: <ul style="list-style-type: none"> • when such shareholder(s) intend to submit one or more significant amendments to the company’s articles of association to an extraordinary general meeting, particularly those relating to the company’s legal form, the conditions for the transfer and assignment of equity securities, as well as the rights attached to them; and • when such shareholder(s) decide in principle on the merger of this company with the company that controls it or with another company controlled by the latter, on the transfer or contribution to another company of all or most of its assets, on the reorientation of the company’s business activity, or on the elimination, over several financial years, of any remuneration of equity securities. <p>c. Same as for calculating threshold crossing for stake-building disclosure, with the following exceptions</p> <ul style="list-style-type: none"> • securities with no voting rights are not taken into account;
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		<ul style="list-style-type: none"> • shares already issued/voting rights that are subject to any agreement or financial instrument with an economic effect similar to ownership of such shares, whether such agreement or financial instrument provides for physical settlement or cash settlement, are not taken into account; and • with regard to shares already issued or voting rights that the person is entitled to acquire on its own initiative, immediately or in the future by virtue of a financial instrument, only the following financial instruments are taken into account: bonds convertible into shares, futures, forwards, and options (whether exercisable immediately or in the future, and regardless of the share price in relation to the option price; however, where the option can only be exercised if the share price reaches a threshold specified in the contract, the underlying share are taken into account if and when that threshold is reached). <p>d. Any transaction that causes the above thresholds to be crossed (including acting in concert/forming a group with other owners of securities/bidders etc). An MTO may also be triggered by a passive threshold crossing resulting from a decrease in the number of shares or voting rights (eg, granting of double voting rights or distribution of a dividend in shares), however, exemptions are available in such situations.</p> <p>e. The AMF may grant an exemption to the obligation to file an MTO upon request of the shareholder concerned in various legitimate cases, particularly if the crossing was not intended to obtain or increase control or when the general meeting has the opportunity to vote on the triggering event; for example:</p> <ul style="list-style-type: none"> • subscription to a capital increase of a company in a proven situation of financial difficulty, subject to the approval of the general meeting of its shareholders; • merger or contribution of assets transaction subject to the approval by the general meeting of shareholders; • reduction in the total number of equity securities or the total number of voting rights existing in the target company;
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		<ul style="list-style-type: none"> • Holding of a majority of the voting rights of the company by the applicant or by a third party, acting alone or in concert; and • Reclassification transaction, or a transaction that is considered as a reclassification, between companies or persons belonging to the same group. <p>The AMF may also authorise a temporary crossing of the MTO threshold if such crossing results from a transaction that is not intended to obtain or increase control of the issuer and if its duration does not exceed six months; in this case, the person concerned undertakes not to exercise the corresponding voting rights during such period.</p> <p>The AMF may also determine that there is no need to file a public offer project when the MTO thresholds are crossed by one or more persons who declare that they are acting in concert:</p> <ol style="list-style-type: none"> 1. with one or more shareholders who already held, alone or in concert, the majority of the company's share capital or voting rights, provided that these shareholders remain predominant; and 2. with one or more shareholders who already held, alone or in concert, between 30 per cent and half of the company's share capital or voting rights, provided that these shareholders retain a higher stake, and that, on the occasion of this concerted action, they do not cross any of the MTO thresholds. <p>In the above cases, as long as the balance of the respective holdings within a concerted group is not significantly altered compared to the situation observed at the time of the initial declaration, there is no need to file a public offer.</p> <p>f. Automatic deprivation of voting rights above the threshold, administrative and judicial injunctions, administrative sanctions and shareholder liability.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. In an MTO, the floor price is equal to the highest price paid by the offeror, acting alone or in concert, in the 12-month period preceding the crossing of the threshold (this obligation is provided for in the European Directive). For example, in a concert situation, any acquisition by a member of the concert will be taken into consideration. Certain specific exceptions are permitted by the AMF when a significant change in the characteristics of the issuer or the market for its securities justifies it (eg, significant events affecting securities value in the last 12 months, issuer in financial difficulty etc). In practice, the price offered in MTOs usually includes a premium over the discounted cash flow (DCF) value. If no acquisitions have been made, the price shall be consistent with a multicriteria analysis. There are no legal or regulatory written restrictions on the purchase of shares after the offer, but a cautious case-by-case approach is advisable.</p> <p>b. NO conditions related to financing, material adverse change (MAC) clauses, foreign direct investment (FDI), etc. An antitrust-related condition is theoretically possible but in practice, MTOs are usually structured so that antitrust clearances are obtained before the MTO threshold is crossed and thus before filing of the offer with the AMF.</p> <p>c. NO. An MTO may be an exchange offer, a mixed offer or a mix and match offer (rare in practice).</p> <p>d. If, at the closing of the offer, the offeror does not hold a number of shares representing more than half of the capital or voting rights of the target, the offer is null and void and the offeror's voting rights are frozen above 30 per cent (as long as the offeror does not hold more than 50 per cent of the share capital or voting rights) and the offeror is not entitled to increase its stake other than through a subsequent offer. Applicable rules do not specify a time limit within which the MTO must be filed once the conditions are met.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>YES. The AMF may ask persons for whom there are reasonable grounds to believe that they are preparing a tender offer (eg, suspicions arising from stake-building and leaks) to disclose their intentions to the market. If the potential offeror declares that it does not intend to launch an offer, it may not, for a period of six months from its declaration, proceed with the filing of a tender offer, unless it can demonstrate significant changes in the environment, situation or shareholding of the persons concerned, including the issuer itself.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Germany

	Which jurisdiction are you covering?	Germany
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	For listed companies pursuant to section 33 of the Wertpapierhandelsgesetz (WpHG): obligation to notify the issuer if the thresholds of three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent or 75 per cent of the voting rights from shares belonging to it in an issuer are reached, exceeded or undershot.
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. NOTification to the issuer and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht or BaFin) without delay, that is, without culpable delay, at the latest within four trading days from the date on which the person subject to the notification obligation became aware or should have become aware of the facts triggering the notification obligation (section 33 (1) sentence 3, 47 of the WpHG).</p> <p>The issuer must publish the notification immediately, at the latest three trading days after receipt of the notification, and transmit it to the company register and BaFin.</p> <p>b. NOTification to be transmitted electronically to the issuer and BaFin using a uniform European standard form.</p> <p>Publication by the issuer should be made via media that ensure that the information is disseminated throughout the EU and the EEA. The language is German or English.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES, (section 39 of the WpHG). They don't have to be exercisable/convertible within a time period.</p> <p>d. YES</p> <p>e. YES</p> <p>f. YES, for example, transferable securities, options, futures contracts, swaps, interest rate swaps and contracts for difference (section 38 (2) of the WpHG).</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES (section 33 (1), (3), 43 (1) of the WpHG).</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Any of a, b or c.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/ forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. A group is formed when a controlling company and one or more dependent companies are combined under the uniform management of the controlling company – on a contractual or de facto basis.</p> <p>A contractual group (section 291 ff of the Aktiengesetz (AktG)) is created by the conclusion of a domination agreement or a profit transfer agreement and must be entered in the commercial register. The subsidiary is subject to the management of the parent company.</p> <p>A de facto group is purely factual, usually one company is dependent on another because the controlling company owns the majority of shares in the dependent company.</p> <p>b. There does not have to be a formal agreement, as in the case of a de facto group.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES. Notifying party must state within 20 trading days whether it is equity or debt funds (section 43 of the WpHG) if holding threshold of ten per cent is reached or exceeded.</p> <p>d. YES. Date of threshold contact.</p> <p>e. YES. A person subject to a disclosure obligation who reaches or exceeds the threshold of ten per cent or a higher threshold must disclose the objectives pursued with the acquisition of the voting rights. A change in the objectives must also be disclosed within 20 trading days (section 43 of the WpHG)</p> <p>f. NO</p> <p>g. NO</p> <p>h. YES</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES (section 33 (1) of the WpHG).</p> <p>b. YES (section 34 (1) of the WpHG).</p> <p>c. YES (section 34 (2) of the WpHG).</p> <p>d. YES</p> <p>e. Issuer is required to publish disclosures received from notifying party (section 40 of the WpHG).</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES, positions held on behalf of a third party require disclosure as long as the manager may exercise voting rights under their own discretion, section 34 (1) No 6 of the WpHG.</p> <p>b. YES, passive investors are not generally exempt from disclosure obligation. However, section 36 of the WpHG outlines exceptions for professional market participants holding shares only temporarily and for a specific purpose and without the intent to exercise the voting rights themselves. Generally, exercise of voting rights is blocked in these cases.</p> <p>c. Investors are exempt from disclosure obligation where their disclosure obligations have been met by their parent company within the meaning of section 35 (1) of the WpHG or that company's parent company (section 37 of the WpHG, group notification).</p> <p>German law does not provide for short form disclosures.</p> <p>German-domiciled issuers may, by stipulation in their articles of association, exempt their shareholders from disclosure obligations under section 43 of the WpHG.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/ purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. A subsequent increase or decrease in ownership does not trigger a revision of disclosure, but may trigger additional disclosure obligations.</p> <p>c. YES. Exceeding or going below the ten per cent threshold under section 43 of the WpHG triggers a duty to inform the issuer about the shareholder's intent within 20 business days. A change in intent triggers an obligation to update this declaration, likewise within 20 business days (section 43 (1) 2 of the WpHG).</p> <p>d. Measures that raise or reduce share capital like capital increases/reductions or the restructuring of share capital can lead to a revision requirement. Likewise, falling below the reported shareholding (section 33 (1) sentence 3 of the WpHG) gives rise to a notification obligation. The revision requirement may also arise from the creation or termination of attributions pursuant to section 34 of the WpHG. Under section 33 (3) of the WpHG unconditional claims towards a transfer of shares may trigger a disclosure obligation. If such disclosure is made, subsequent significant delays in execution may trigger a revision requirement immediately, at the latest within three trading days.</p> <p>e. see c and d.</p> <p>f. NO</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES, intentional or negligent breaches of the obligations under sections 33 (1) and (2), 38 and 39 of the WpHG constitute administrative offences under section 120 (2) no 2 (d) and (e) of the WpHG and incur significant fines. Additionally, BaFin will publish names of shareholders who failed to comply with the disclosure requirements on their website (naming and shaming, section 124 of the WpHG).</p> <p>c. UNCLEAR. The existence of damage claims due to a violation of disclosure obligations under section 33 et. seq. WpHG is an unanswered legal question, with controversial opinions held in German legal discourse. Clear case law has not been established on the subject.</p> <p>d. YES, section 44 of the WpHG provides for a suspension of most shareholder rights of the notifying party or parties in the listed company until disclosure obligations are met.</p> <p>e. NO</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES, an MTO to all shareholders is required by section 35 (2) of the Wertpapiererwerbs und Übernahme gesetz (WpÜG) (German Takeover Act) if the bidder obtains control of the target company. Control is defined as the holding of at least 30 per cent of the voting rights (section 29 (2) of the WpÜG). An MTO is triggered both by the acquisition of direct and indirect control, including shares held by subsidiaries or third parties on behalf of the bidder, as well as acting in concert (section 30 of the WpÜG).</p> <p>c. An MTO to all shareholders is required by section 35 (2) of the WpÜG if the bidder obtains control of the target company. Control is defined as the holding of at least 30 per cent of the voting rights (section 29 (2) of the WpÜG). AN MTO is triggered both by the acquisition of direct and indirect control, including shares held by subsidiaries or third parties on behalf of the bidder, as well as acting in concert (section 30 of the WpÜG). Instruments and securities that don't confer direct voting rights are not considered.</p> <p>d. An MTO is generally triggered if the 30 per cent threshold is breached by any event, including beneficial ownership, acting in concert and so on. The bidder may apply to BaFin for certain voting rights to be disregarded when determining the 30 per cent threshold (eg, acquisitions through family succession, changes in legal form or intra-group restructurings) (section 36 of the WpÜG).</p> <p>e. NO obligation to make an MTO if threshold was breached as a result of a voluntary takeover offer (VTO) (section 35 (3) of the WpÜG). Bidder may also apply for an exemption from the MTO obligation, for example, in cases of subsequent shortfall of the threshold or lack of ability to exercise control over the target. Details are regulated in an administrative regulation by the Federal Ministry of Finance (WpÜG-Angebotsverordnung).</p> <p>f. Sanctions may consist of fines of up to €10m and the suspension of rights (such as voting rights) attached to the bidder's shares for as long as the obligation to make an MTO remains unfulfilled (sections 59 and 60 of the WpÜG).</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. Pre-bid integration: the bidder is required to offer a price that is at least equal to the average weighted stock market price of the shares during the three months preceding the announcement of acquiring control over the target company, section 31 (1) and (7) of the WpÜG, section 5 (1) of the WpÜG-Angebotsverordnung. Post-bid integration: if the bidder acquires shares during the offer period at a price higher than the bid offer price, the offer price is to be adjusted accordingly. The same rule applies to purchases made outside a regulated stock exchange within one year after the end of the offer period (section 31 (4) and (5) of the WpÜG).</p> <p>b. YES, an MTO may only be conditional subject to certain mandatory legal requirements, in particular mandatory antitrust clearance (section 18 of the WpÜG).</p> <p>c. NO, pursuant to section 31 (2) of the WpÜG the bidder can offer both cash or liquid shares. However, the bidder is required to make a cash offer if, during the period from six months before the announcement of the decision to launch a takeover bid until the end of the offer period, the bidder, persons acting in concert with the bidder, or their subsidiaries have acquired at least five per cent of the shares or voting rights in the target company for cash (section 31 (3) of the WpÜG).</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Hong Kong

	Which jurisdiction are you covering?	Hong Kong
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Pursuant to Part XV to the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the 'SFO'), disclosure of interest filings is required for:</p> <ul style="list-style-type: none"> a. Substantial shareholders – that is, individuals and corporations who are interested in five per cent or more of any class of voting shares in a listed corporation – must disclose their interests, and short positions, in voting shares of the listed corporation; and b. Directors and chief executives of a listed corporation must disclose their interests and short positions in any shares in a listed corporation (or any of its associated corporations) and their interests in any debentures of the listed corporation (or any of its associated corporations).
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <ul style="list-style-type: none"> a. Deadline for disclosure? b. Form of disclosure: press release, form filing, insider report, etc? 	<p>In the case of an initial notification the time allowed for filing a notice is ten business days as opposed to three business days in the case of the other relevant events.</p> <p>Disclosure of interest forms shall be filed with The Stock Exchange of Hong Kong Limited (the 'Stock Exchange') and can be found on the DI pages of HKEX website (www.hkexnews.hk/di/di.htm).</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES. Disclosure is required for ‘voting shares’, which refers to shares of a class that carry a right to vote in all circumstances at general meetings of a listed corporation and includes unissued shares which, if issued, would have such rights.</p> <p>b. NO. See the explanation to 3a.</p> <p>c. YES. Instruments should be exercisable/convertible within a time period.</p> <p>Pursuant to section 322(8) of the SFO:</p> <p>‘a person who is the holder, writer or issuer of equity derivatives is taken to have an interest in voting shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivative –</p> <p>(a) he has a right to require another person to deliver the underlying shares to him;</p> <p>(b) he is under an obligation to take delivery of the underlying shares;</p> <p>(c) he has a right to receive from another person an amount if the price of the underlying shares increases; or</p> <p>(d) he has a right to avoid or reduce a loss if the price of the underlying shares increases, before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.’</p> <p>d. Contracts or financial instruments such as those immediately below are all covered by the term ‘equity derivatives’ –</p> <ol style="list-style-type: none"> 1. warrants, callable bull bear contracts and other structured products; 2. convertible bonds, exchangeable bonds and other equity linked instruments (equity linked deposits, funds, notes, certificates or other securities); 3. American depositary receipts and Hong Kong depositary receipts; 4. stock options and stock futures; 5. over-the-counter forwards, options or swaps;
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		<p>6. a derivative over another equity derivative; and</p> <p>7. credit derivatives that have reference obligations or deliverable obligations which are exchangeable or convertible bonds,</p> <p>regardless of whether they are physically settled, by delivery of the underlying shares, or cash settled.</p> <p>e. YES. See the response to 3a. The regime for securities borrowing and lending transactions is different to the general disclosure regime. The following is a brief summary:</p> <p><i>The borrower</i></p> <p>The borrower of shares is normally required to disclose the borrowing and return of shares if the percentage figure of the borrower's interest passes through a percentage level of five per cent or higher. This is because the borrower acquires an interest in the shares when he/she borrows them and ceases to have an interest in the shares when he/she returns them to the lender. However, the initial borrowing of shares also creates a 'short position' (ie, the obligation to return the shares) for the borrower and this must be disclosed separately when he/she gives a notification.</p> <p><i>The lender</i></p> <p>The position of a stock lender is more complex. The lending of stock gives rise to a duty of disclosure because there is a change in the nature of an interest in shares when they are lent and returned. A loan of one per cent or more of the shares of a listed corporation by a substantial shareholder will always give rise to a disclosure obligation. A loan of up to one per cent will not give rise to a disclosure obligation if after the transaction the percentage level of the lender's interest in their other shares (ie, those which have not been lent) remains at the same level as at the time of the last notification given by the lender.</p> <p>f. See the responses above.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES. See the response to 3e.</p> <p>d. YES</p> <p>e. YES on the occurrence of certain events under section 308 of the SFO for substantial shareholders.</p> <p>A duty of disclosure may also arise due to actions taken by others. For example, if the listed corporation concerned bought back shares and as a result the number of shares in issue reduced which leads to the percentage level of a substantial shareholder's interest increasing, such substantial shareholder would come under a duty of disclosure.</p> <p>It is common in Hong Kong for there to be a 'placement' and a related 'topup'. The major shareholder places a block of shares with a third party and then the listed corporation issues the same number of new shares to the major shareholder. This leads to a dilution of the interests of other shareholders in the listed corporation. If as a result of a placement and top up, the percentage level of a substantial shareholder's interest reduces, such substantial shareholder will come under a duty of disclosure.</p> <p>f. N/A</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Substantial shareholders only have to disclose their interests in 'voting shares' of a listed corporation – not all types of shares. Shares that are 'voting shares' are shares of a class that carry a right to vote in all circumstances at general meetings of a listed corporation. They also include unissued shares which, if issued, would have such rights.</p> <p>You will have an 'interest' in shares for the purposes of Part XV of the SFO if you have an interest of any kind whatsoever in the shares. For example:</p> <ol style="list-style-type: none"> 1. if your name is listed in the register of members maintained by a corporation; 2. if the shares are held for you by another person such as your stockbroker, a custodian, a trustee or a nominee (eg, in the Central Clearing and Settlement System (CCASS) or with HKSCC Nominees Limited, the CCASS depository); 3. if you are deemed by Part XV of the SFO to be interested in the shares; 4. if you enter into a contract (eg, if you hold, write or issue financial instruments including equity derivatives) that gives you a right to shares, a right of first refusal of shares, or to a payment in the event of a change in the price of shares; 5. if you hold shares as security; and 6. if you are entitled to exercise rights attaching to the shares or control their exercise (eg, voting rights) or the right to sell the shares themselves. Hence, if you are a fund manager you would normally have an interest in the shares in the fund(s) that you manage.
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>Section 317 of the SFO require the disclosure of interests acquired by persons pursuant to certain agreements. For example, when two or more persons enter into an agreement to acquire interests in shares in a particular listed corporation, and:</p> <p>a. the agreement also includes provisions imposing restrictions on either of the parties on the manner in which they can:</p> <ol style="list-style-type: none"> 1. exercise rights attaching to the shares they acquire (eg, voting rights); or 2. dispose of those shares; and <p>b. interests in shares are actually acquired pursuant to the agreement, then the provisions of s 317 apply.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES. The category of derivatives will have to be disclosed.</p> <p>c. YES – Applicable for off-exchange transactions where the nature of the consideration paid or received shall be disclosed.</p> <p>d. YES</p> <p>e. NO</p> <p>f. A brief description of the relevant event triggering disclosure filing is required.</p> <p>g. NO</p> <p>h. YES</p> <p>i. N/A</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. See the response above.</p>
9.	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES, if they meet the disclosure thresholds stipulated in Question 1. There is no short form disclosure.</p> <p>b. YES, if they meet the disclosure thresholds stipulated in Question 1. There is no short form disclosure.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/ purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES, subsequent filings upon occurrence of relevant events under section 308 of the SFO.</p> <p>b. When there is an increase in the percentage figure of one's holding that results in one's interest crossing over a whole percentage number which is above five per cent (eg, interest increases from 6.8 per cent to 7.1 per cent – crossing over seven per cent), then a new disclosure of filing interest will have to be made.</p> <p>c. Where there is a change of nature of a person's interest, disclosure of filing interests will have to be made. The most common situations in which there will be a change in the nature of a person's interest in shares, including shares which are the underlying shares of equity derivatives, are:</p> <ol style="list-style-type: none"> 1. when a person grants or exercises rights under equity derivatives (whether physically or cash settled); 2. when a person has rights under equity derivatives (whether physically or cash settled) exercised against him; 3. where a person lending shares under a securities borrowing and lending agreement, agrees to deliver or delivers the shares to the person borrowing the shares under the agreement; 4. where a person lending shares under a securities borrowing and lending agreement, takes delivery of shares which are returned by the person who borrowed the shares under the agreement; 5. where a person enters into a contract for the sale of shares in which he is interested; 6. where a person takes delivery of shares from another person; 7. where a person provides an interest in shares as security or a person returns shares held as security (releases a security interest); 8. where steps are taken to enforce a security interest against a person; 9. where a person declares a trust over shares that he continues to hold; and 10. where shares held in a (non-discretionary) trust are distributed to beneficiaries of the trust.
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		<p>d. See the response to 10c.</p> <p>e. Filings should be made within three business days after the relevant event.</p> <p>f. NOT for the purpose of disclosure of interest filings.</p>
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. Under sections 328 and 351 of the SFO, it is a criminal offence if a person: (1) without reasonable excuse, fails to make a disclosure in accordance with the provisions of Part XV of the SFO that apply to that disclosure; or (2) when making a disclosure, makes a statement that they know is false or misleading in a material particular.</p> <p>If a person commits an offence, they are liable: (1) on conviction on indictment to a fine of \$100,000 and to imprisonment for two years; or (2) on summary conviction to a fine of \$10,000 and to imprisonment for six months, for each offence of which the person is convicted.</p> <p>b. Under Part IX of the SFO, the Securities and Futures Commission (SFC) is given power to discipline those that it licenses or registers, comprising firms and those who perform functions for them which require a licence or registration, including those involved in their management (together referred to as 'regulated persons'). If the SFC finds that a regulated person's conduct suggests it is guilty of misconduct or not fit and proper, the SFC may impose sanctions selected from a range set out in the SFO, including but not limited to revocation/suspension of licence, imposition of fine or private or public reprimand.</p> <p>c. See response to 11a and b.</p> <p>d. NO</p> <p>e. See response to 11a and b.</p>

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES. In Hong Kong, the Hong Kong Code on Takeovers and Mergers (Takeovers Code) is administered by the Executive Director (Executive) of the Corporate Finance Division of the SFC to ensure fair and equal treatment of all shareholders in relation to takeovers.</p> <p>b. Under Rule 26 of the Takeovers Code, the SFC requires a mandatory offer to be made to all the shareholders of the offeree by the offeror in the following circumstances, unless a waiver is granted by the Executive:</p> <ol style="list-style-type: none"> 1. any person acquires, whether by a series of transactions over a period of time or not, 30 per cent or more of the voting rights of a company; 2. two or more persons are acting in concert, and they collectively hold less than 30 per cent of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 30 per cent or more of the voting rights of the company; 3. any person holds not less than 30 per cent, but not more than 50 per cent, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than two per cent from the lowest percentage holding of that person in the 12-month period ending on and inclusive of the date of the relevant acquisition; or 4. two or more persons are acting in concert, and they collectively hold not less than 30 per cent, but not more than 50 per cent, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than two per cent from the lowest collective percentage holding of such persons in the 12-month period ending on and inclusive of the date of the relevant acquisition.
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		<p>c. See response 12b: the acquisition of voting rights will trigger MGO obligations. Voting rights means all the voting rights currently exercisable at a general meeting of a company whether or not attributable to the share capital of the company.</p> <p>d. See response 12b.</p> <p>e. YES. For example, when the issue of new securities as consideration for an acquisition, a cash subscription, or the taking of a scrip dividend would otherwise result in an obligation to make a mandatory offer under this Rule 26, the Executive will normally waive the obligation if the whitewash waiver and the underlying transaction(s) are separately approved by at least 75 per cent and more than 50 per cent respectively of the independent vote that are cast either in person or by proxy at a shareholders' meeting.</p> <p>f. If the Executive is satisfied that a person has contravened a requirement imposed by or under the Takeovers Code, the Executive may give any direction that appears to it to be necessary in order to: (1) restrain a person from acting (or continuing to act) in breach of a relevant requirement under the Takeovers Code; or (2) restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his/her is or would be a breach of a relevant requirement under the Takeovers Code; or (3) otherwise secure compliance with a relevant requirement under the Takeovers Code.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. Mandatory offers made under Rule 26 of the Takeovers Code must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class of the offeree company during the offer period and within six months prior to its commencement.</p> <p>b. Except with the consent of the executive, a mandatory offer under Rule 26 must be made conditional only upon the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than 50 per cent of the voting rights. However, where the offeror holds more than 50 per cent of the voting rights before the offer is made, an offer made under this rule must normally be unconditional. In particular, a mandatory offer may not be made conditional upon the passing of shareholders' resolutions of the offeror.</p> <p>c. NO. The Takeovers Code allows for a securities exchange offer, meaning an offer in which the consideration includes securities of the offeror or any other company.</p> <p>d. N/A</p>
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<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>In Hong Kong, until a firm intention to make an offer has been notified, a brief announcement by a potential offeror or the offeree company that talks are taking place or that a potential offeror is considering making an offer will normally satisfy the obligations under Rule 3 of the Takeovers Code. After the announcement of a possible offer under Rule 3.7 of the Takeovers Code, announcements must be made monthly as to the progress of the talks or the consideration of a possible offer until an announcement of a firm intention to make an offer under Rule 3.5 of the Takeovers Code or of a decision not to proceed with an offer is made.</p> <p>Rule 3.1 of the Takeovers Code stipulates that the offeror or potential offeror must make an announcement:</p> <ol style="list-style-type: none"> a. when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of share turnover, and there are reasonable grounds for concluding that it is the actions of the potential offeror or persons acting in concert with it (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation; b. when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or c. immediately upon an acquisition of voting rights which gives rise to an obligation to make an offer under Rule 26 of the Takeovers Code (see response to Question 13). <p>Rule 3.5 of the Takeovers Code requires an announcement of firm intention to make an offer when an offeror has every reason to believe that it can and will continue to be able to implement the offer. When there has been an announcement of a firm intention to make an offer, except with the consent of the Executive, the offeror must proceed with the offer unless the offer is subject to the fulfilment of a specific condition and that condition has not been met.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Hungary

	Which jurisdiction are you covering?	Hungary
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>In harmony with the Transparency Directive, Act CXX of 2001 on the Capital Markets (the 'CMA') is the primary piece of legislation regulating public takeovers in Hungary, as amended from time to time, which contains the applicable provisions on notification and disclosure requirements relating to the acquisition/disposal of voting interest in public companies limited by shares and introduced specific exemptions from such notification and disclosure obligation.</p> <p>Direct or indirect acquisition or disposal of five per cent and multiples thereof of all voting shares, or voting rights in any form (beyond direct sale and purchase for example, on the basis of syndicate agreements (de facto), or options, futures, or other instruments granting discretionary rights to acquire or dispose of voting shares) must be reported to the issuer and the Supervisory Authority (ie, the Hungarian National Bank (HNB)) and published within two calendar days following the acquisition. Once the 50 per cent threshold is reached, the same reporting obligation applies to any acquisition or disposal reaching 75 per cent, 80 per cent, 85 per cent, and 90 per cent, and above 90 per cent, to every additional one per cent of voting rights, up to 99 per cent. Provisions stricter than the minimum requirements of the law may be laid down in the statutes of a company limited by shares, thus requiring notification even if the threshold of five per cent is not reached.</p> <p>The first day shall be the day after the day on which the shareholder became aware, or should have become aware in the exercise of due diligence generally expected in the given circumstances, of:</p> <ol style="list-style-type: none"> a. the acquisition or disposal of the share granting voting rights, and the possibility or termination of exercising the voting rights, regardless of the actual date on which such events occurred; or b. based on the information disclosed by the issuer, that the number of shares to which voting rights are attached under the terms of the issuer's statutes has changed.

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure?</p> <p>The person acquiring or gaining control of the specified proportion of voting rights must notify the issuer and the HNB without delay, but no later than within two calendar days following the acquisition. The deadline for notification is calculated from the date of the agreement, which must include the date and conditions of the acquisition.</p> <p>Following the notification by the person acquiring control, the issuer shall publish the information without delay, but no later than within two calendar days, while simultaneously notifying the HNB (as extraordinary disclosure).</p> <p>b. Form of disclosure: press release, form filing, insider report etc?</p> <p>The technical rules for disclosure under the CMA require that information must be disclosed via an electronic form through an electronic delivery and official information storage system operated by the HNB, called ERA. This obligation applies to disclosure requirements relating to securities issued to the public.</p> <p>The notification obligation under the CMA as well as the declaration of exemption from this obligation, must also be fulfilled using an electronic form through the ERA system.</p> <p>In order to ensure unrestricted access to regulated information, the issuer must simultaneously:</p> <p>a. submit the information for publication to at least one media outlet with a publicly accessible website for investors;</p> <p>b. publish the information on its own website; and</p> <p>c. send the information to the official information storage system (ERA).</p> <p>The issuer must provide the same unedited version of the regulated information to the media, the information storage system, and on its website. For annual and semi-annual reports, the information sent to the media may include internet links outside the information storage system.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>The disclosure of a stake is required based on the proportion of voting shares and voting rights held directly or indirectly; therefore, voting shares are subject to the obligation, while non-voting shares are not.</p> <p>A disclosure obligation also applies to any person who directly or indirectly holds a financial instrument that, upon maturity, unconditionally or at the discretion of the holder, entitles the holder to acquire voting shares and voting rights of the issuer.</p> <p>Under the CMA, the following are considered financial instruments to which the disclosure obligation applies:</p> <ul style="list-style-type: none"> a. transferable securities; b. options; c. futures contracts; d. swap agreements; e. over-the-counter forward rate agreements; f. contracts for difference; or g. any agreement that has a similar economic effect to the financial instruments specified in points a–f. <p>Regarding Question c, the CMA does not contain specific rules on this matter; therefore, there is no defined timeframe within which a swap transaction must be executed in the case of derivatives. The disclosure obligation arises even in the case of agreements under which the actual acquisition of influence (hereinafter or above ‘acquisition of influence’) takes place only at a later date or upon the fulfillment of certain conditions as specified in the agreement.</p> <p>The CMA defines the concept of acquisition of influence as the acquisition of voting shares or voting rights in the target company, including the exercise of a purchase option, repurchase right, forward purchase agreement related to voting shares or the exercise of voting rights based on usage or usufruct rights. It also covers situations where control arises not through the direct conduct of the acquirer, but due to other circumstances – particularly succession, resolutions by the company that affect shareholders’ voting rights and modify voting ratios, the reactivation of voting rights – or as a result of cooperation between persons acting in concert for this purpose.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>In the case of an acquisition of voting rights triggering disclosure obligation or a take over bid by persons acting in concert, all contracting parties are jointly obliged to make the disclosure and/or the takeover bid, unless they agree on a single party to act as the bidder. However, such an agreement on the identity of the disclosing person or the bidder does not exempt the other parties from liability in connection with the obligation to make the disclosure or the takeover bid.</p> <p>c. Securities lending, short positions etc? If these transactions entitle the borrower to exercise voting rights (eg, temporarily the borrower exercises voting rights), then yes, otherwise no.</p> <p>f. Other? An option or contractual agreement that de facto allows a person to exercise voting rights is considered a triggering transaction. Similarly, a contractual security interest – such as a pledge – may also result in voting rights being exercised by the holder of the security, provided the agreement permits this. Furthermore, shareholdings held by close relatives or affiliated entities must be aggregated, as these situations raise the issue of coordinated behaviour (see Question 6).</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>According to the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, individuals who exercise voting rights are also considered beneficial owners. Based on this, the person acquiring control qualifies as a beneficial owner and their data must be disclosed.</p> <p>This can be supplemented by the CMA, which states that the holders of shares granting voting rights, whether directly or indirectly held, are also considered beneficial owners. Furthermore, this includes those who enjoy actual economic benefits from the company (eg, persons entitled to dividends), as well as those who exercise disposal rights over the relevant shares.</p>
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>Pursuant to the CMA, when determining the voting rights triggering disclosure obligation or a takeover bid (hereinafter or above acquisition of influence), the cooperation of persons acting in concert for the purpose of acquiring influence must be taken into account and aggregated.</p> <p>Who qualifies as a person acting in concert? Without the need to prove intent, members of a group are deemed to be acting in concert. Under the law of the Credit Institutions Act a group comprises a parent company, its subsidiaries, and all entities in which the parent company or its subsidiaries exercise controlling or have a shareholding relationship.</p> <p>In the event of an acquisition of influence by persons acting in concert, all contracting parties are jointly obliged to make the takeover bid, unless they agree on a single party to act as the bidder. However, such agreement on the identity of the bidder does not exempt the other parties from liability in connection with the obligation to make the takeover bid.</p> <p>Therefore, under Hungarian law, persons acting on the basis of an agreement, affiliated undertakings, close relative, and persons acting on behalf of the same individual are also subject to the notification obligation. Additionally, in order to prevent the circumvention of a mandatory takeover offer (MTO) Hungarian law contains provisions whereby such persons are treated as a single acquirer.</p>

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. YES</p> <p>f. YES</p> <p>h. YES</p> <p>The bidder is required to disclose the percentage of equity/voting rights and the number and type of financial instruments.</p> <p>The source of funds does not need to be disclosed publicly, although a proof of sufficient funds (eg, a bank guarantee or deposit) must be filed with the Financial Supervisory Authority (FSA) as part of the offer documentation.</p> <p>Regarding acquisition details, the date and volume must be disclosed, but the price is not public information. The bidder must also disclose its purpose and intentions through an operating plan and business report. Any agreements or arrangements among shareholders that materially affect the issuer or the securities must be disclosed, and such agreements must be filed with the FSA. Furthermore, persons acting in concert must be aggregated and disclosed.</p> <p>Lastly, any other material circumstances that may influence the offer – such as the impact on employees or objective material adverse change clauses – must also be included in the offer document, as required by the CMA following the implementation of the EU Takeover Directive (CMA, post-2006 amendment).</p> <p>Note to Question e: We interpret the question to mean that the purchaser must indicate their intention to acquire, and such an obligation exists. Specifically, the offeror is required to prepare an operational plan in connection with making the offer, in which they must specify the purpose of the acquisition, namely how they intend to use the acquired shareholding/influence in the future.</p>
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8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>According to the CMA legal owner, the beneficial owner, the parties acting in concert shares in a concerted manner, as well as the direct owner are all subject to a notification obligation towards the issuer and the HNB, the issuer is also obliged to publish the information and simultaneously notify the HNB.</p>
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<p>9.</p>	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. NO</p> <p>b. NO</p> <p>Money/asset managers and passive investors are exempted from disclosure if they qualify as one of the exempted shareholders as defined below:</p> <p>A shareholder may be exempt from the obligation to notify the issuer and the HNB under certain conditions. A subsidiary is exempt from the notification requirement if the parent company fulfills this obligation on its behalf.</p> <p>Credit institutions and investment firms are not required to take into account the voting rights attached to shares held in their trading book for the purposes of disclosure, provided that:</p> <ul style="list-style-type: none"> • the voting rights cannot be exercised; • they do not participate in decisions related to the appointment or removal of members of the issuer’s decision-making, executive, or supervisory bodies; and • the voting rights attached to the shares held in the trading book do not exceed five per cent. <p>This exemption also applies specifically to credit institutions and investment firms if:</p> <ul style="list-style-type: none"> • the voting rights cannot be exercised; • they do not take part in decisions concerning the appointment or removal of members of the issuer’s management or supervisory bodies; and • the voting rights connected to the trading book shares do not exceed five per cent. <p>Under shareholders are also exempt from the disclosure obligation if the voting rights arise from shares acquired for the purpose of stabilisation in accordance with market abuse regulations and Regulation (EU) No 596/2014, provided that:</p> <ul style="list-style-type: none"> • the voting rights cannot be exercised; and • the shareholder does not participate in decisions regarding the appointment or removal of the issuer’s decision-making, executive or supervisory bodies.
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		<p>Finally, market makers are also exempt from the notification obligation if:</p> <ul style="list-style-type: none"> • they ensure that no one exercises the voting rights attached to the shares held; • they notify the HNB before starting and stopping their market-making activity; and • they maintain separate records of the shares and financial instruments used in the course of their market-making activity.
<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>The triggering event for the notification obligation is an increase in the shareholder's ownership or voting rights. The obligation arises when the shareholder's voting rights reach or exceed specific thresholds set by law. Once the 50 per cent threshold is reached, the same reporting obligation applies to any acquisition or disposal reaching 75 per cent, 80 per cent, 85 per cent and 90 per cent, and above 90 per cent, to every additional one per cent of voting rights, up to 99 per cent (see Question 1). Any acquisition that causes the shareholder's voting rights to reach or surpass any of these levels triggers the mandatory notification requirement.</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>A change in the shareholder's intention or objective, in itself, does not give rise to a notification obligation. Such a change becomes relevant only if it is accompanied by a change in ownership or control that results in crossing one of the legally defined thresholds. Therefore, a change in intention must coincide with a relevant acquisition of shares to trigger disclosure.</p>

		<p>d. Any other triggers for a revision requirement?</p> <p>Any change in the proportion of voting rights must be reported if the shareholder becomes aware of the acquisition or disposal of shares carrying voting rights, or the potential to exercise such rights. This includes both increases and decreases in voting power.</p> <p>e. How soon must the revision be filed?</p> <p>Any such change must be reported and published promptly but no later than two calendar days. This deadline applies to both the notification to the competent authority and the public disclosure.</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p> <p>Essentially, a form of moratorium applies, which functions more as a sanction: if the shareholder fails to fulfill the notification obligation, they are not allowed to exercise their voting rights in the company until the obligation is met.</p>
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>The Hungarian Criminal Code provides for criminal cases that violate the rules of economic management, among which insider trading and unlawful market manipulation receive particular attention and are frequently applied in cases of capital market abuses. The Hungarian National Bank may also file a report in cases of suspected insider trading or unlawful market manipulation. In the decisions forming the basis of such reports, the MNB typically imposes significant market supervision fines.</p> <p>In the event of non-compliance with the above obligation of notification and disclosure, the person involved may not exercise his voting rights in the target company until the notification is submitted.</p>

		<p>Moreover, the Hungarian National Bank may impose fine on the person in delay or non-compliance, the amount of which may be from HUF 100,000 to HUF 2bn (ie, €251 to €5.02m or US\$289 to US\$5.8m).</p> <p>In case the issuer fails to provide the required information, the general rules on regular and extraordinary disclosure apply. If the disclosure is omitted or misleading, the issuer is liable for any resulting damage. Furthermore, if false information is published, the issuer is obligated to immediately publish the correct information (obligation to rectify).The CMA Act refers to the following law on complaints, public interest disclosures, and rules related to the reporting of misconduct, under which a private individual may submit a complaint to the regulatory authority (the Hungarian National Bank) so that the regulatory authority may take the necessary measures and adjudicate the complaint in accordance with the request.</p>
12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES</p> <p>What level/threshold triggers MTO? (Including Questions a and b)</p> <p>According to of the CMA a mandatory public offer must be made for all remaining voting shares if the shareholding of a person (or persons acting in concert) in a public company exceeds the following thresholds:</p> <ul style="list-style-type: none"> • 33 per cent of the voting rights; • 25 per cent of the voting rights, if there are no other shareholders (excluding the bidder or bidder group) holding, either directly or indirectly, more than ten per cent of the voting rights. <p>The thresholds are lower in the case of voluntary company acquisitions. In the event of the acquisition of a specified influence, the offer must also be published here, but it is voluntary because the acquisition is not based on a mandatory requirement. As a general rule, these provisions also apply to the thresholds, with the exception that there is no minimum bid amount and other technical requirements are not specified here.</p>

		<p>c. What type of instrument/securities triggers MTO?</p> <p>An MTO is triggered by the acquisition of voting shares or securities granting voting rights, whether held directly or indirectly. Therefore, only voting shares are subject to the MTO obligation, while non-voting shares do not trigger such a requirement.</p> <p>Under the CMA, the following are considered financial instruments to which triggers MTO:</p> <ol style="list-style-type: none"> 1. transferable securities; 2. options; 3. futures contracts; 4. swap agreements; 5. over-the-counter forward rate agreements; 6. contracts for difference; or 7. any agreement that has a similar economic effect to the financial instruments specified in points a– f. <p>Hungarian regulation applies a uniform approach to financial instruments with regard to MTO rules, similarly to disclosure requirements (see Question 3).</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>An obligation to launch an MTO may be triggered by a variety of transactions or circumstances that result in the acquisition of influence over a target company. These include the direct or indirect acquisition of shares or voting rights; the exercise of call or put options that confer such rights; acquisitions carried out by parties acting in concert (ie, coordinated behaviour with other shareholders or potential bidders with the aim of gaining control); and acquisitions made through asset management or fiduciary arrangements; as well as the performance of a previously concluded and binding sale and purchase agreement. Each of these actions may be considered a trigger event for MTO purposes, depending on the applicable national law and thresholds set therein (eg, 25 per cent or 33 per cent ownership thresholds).</p>
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		<p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>The takeover bid must be made in advance of the intended acquisition. However, if a person's shareholding reaches and exceeds 33 per cent (or 25 per cent if no other shareholder holds more than ten per cent) of the target's voting shares in any of the following ways, it must be notified to the FSA within two days, and the acquisition triggers a mandatory public offer subsequently within 15 days of notification:</p> <ul style="list-style-type: none"> • by a method other than a bid (eg, through an inheritance); • by exercising a call or repurchase option; • as a result of a privatisation of a company held partly or entirely by the state; or • by acting in concert with other shareholders. <p>A voluntary offer may be made for less than all of the shares of the target, therefore, it is often made for the remaining voting shares if the bidder has exceeded the thresholds for, and made, a mandatory offer, but has not yet acquired 90 per cent of the voting rights, and wishes to squeeze out minority shareholders. In case of a voluntary offer a counter-offer may not be made and a voluntary offer may not be made once a mandatory offer is announced until its completion.</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p> <p>If a mandatory bid contrary to the CMA, is not made, the HNB declares such non-compliance and any shareholding exceeding 33 per cent (or 25 per cent) must be sold within 60 days of the HNB's declaration. The HNB can also impose a fine HUF 100,000 to HUF 2bn (ie, €251 to €5.02m or US\$289 to US\$5.8m).</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO.</p> <p>CMA provides a comprehensive set of rules regarding MTOs, including pricing rules, approval requirements, and procedural deadlines.</p> <p>a. The offer price may not be lower than the highest price paid by the offeror for the shares of the target company at the time of the offer. Furthermore, both pre-bid and post-bid integration rules may apply, particularly regarding subsequent transactions following the announcement of the takeover offer.</p> <p>b. The effectiveness of the offer may be subject to conditions such as the acceptance of the offer by shareholders holding a minimum number of shares, the granting of merger clearance by the competent competition authority, or, in certain cases, the approval of the target company's board of directors.</p> <p>c. The consideration offered does not have to be limited to cash. The offeror may also propose securities, shares, or other assets as consideration. The type and ratio of such non-cash consideration must be clearly specified in the offer. The law permits consideration in the form of securities, provided that the offer otherwise complies with the applicable statutory requirements.</p> <p>d. The takeover offer must be published within a statutory period of not less than 30 and not more than 65 days. The offer price may only be modified if the revised price is higher than the originally announced price.</p> <p>e. Under Hungarian law, in an MTO under the CMA Act, the offeror may reserve the right to withdraw the offer if acquiring more than 50 per cent control of the target company is not achieved. The share transfer generally occurs at the end of the acceptance period or upon competition authority approval, and the offeror must pay the consideration shortly thereafter. If payment is delayed, default interest applies, and shareholders may withdraw from the contract after 30 days. Exercising the withdrawal right must be reported to the supervisory authority but does not affect its power to impose sanctions for non-compliance.</p>
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<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>The CMT also includes various put up or shut up mechanisms, by way of example:</p> <ul style="list-style-type: none"> • In cases of concerted practices, such a mechanism is particularly exemplified by a provision under which the law prescribes that if the group reaches 25 per cent or 33 per cent control, they are obliged to make a public takeover bid for the target company's shares within a 15-day deadline. • If the bidder submits the takeover offer late, the legislator has established a mechanism under which the bidder must, within a specified period, either make a firm decision to proceed with the offer (put up) or completely withdraw from the transaction (shut up) provided they have reserved their right to withdraw.
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for India

	Which jurisdiction are you covering?	India
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Disclosure is required in the following cases :</p> <ol style="list-style-type: none"> 1. Acquisition of shares or voting rights, as a result of which the total shares or voting rights held by the acquirer (together with those of any PACs) is five per cent or more of the total shares or voting rights in a listed company.¹ 2. When an acquirer (together with any persons acting in concert) holds five per cent or more of the total shares or voting rights in a listed company and there is a change in such shareholding or voting rights which in aggregate exceeds two per cent of the total shareholding or voting rights in the listed company.² <p>Further, shares taken by way of encumbrance are required to be treated as an acquisition of shares and shares given upon release of encumbrance are required to be treated as a disposal of shares. Accordingly, such acquisitions or disposals are required to be disclosed upon the breach of the relevant disclosure thresholds.³</p>

1 Regulation 29(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the 'SAST Regulations').

2 Regulation 29(2) of the SAST Regulations.

3 Regulation 29(4) of the SAST Regulations.

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. The disclosures must be made within two working days of receipt of intimation of allotment of shares, or the acquisition, or the disposal of shares or voting rights in the target company.⁴</p> <p>b. The disclosure must be made to every stock exchange where the shares of the target company are listed; and the target company at its registered office.⁵</p> <p>According to common practice, ‘intimation of allotment of shares’ is provided to the acquirer of shares of a listed company on the day that such acquirer purchases such shares. This intimation is conveyed by the stock broker/ custodian to the acquirer and/or by any other concerned market intermediary (eg, registrar and transfer agent).</p>
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4 Regulation 29(3) of the SAST Regulations.

5 *Ibid.*

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/ convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES⁶</p> <p>b. YES</p> <p>c. and d. Cash settled derivatives are excluded from the substantial shareholder disclosure regime, whereas physically settled derivatives will trigger the disclosure requirements under the SAST Regulations if they constitute convertible securities.</p> <p>e. Based on clarification obtained on this issue through informal discussions with Securities and Exchange Board of India (SEBI) officials and recent market practice, the stock borrower is not required to make any disclosures in respect of the borrowing of securities.</p> <p>f. See the complete list of 'securities' below, which are subject to disclosure requirements:</p> <ol style="list-style-type: none"> 1. shares; 2. voting rights; 3. shares with limited voting rights; 4. shares with multiple voting rights; 5. in certain cases unissued shares are caught by the SAST Regulations disclosure regime, for example, in relation to convertible securities; 6. (1) acquisition or disposal of non-convertible preference shares carrying voting rights; or (2) accrual of voting rights on such non-convertible preference shares, where such acquisition or disposal breaches the prescribed disclosure thresholds; 7. depository rights – the acquisition of depository rights relating to shares listed on an Indian market (whether global depository receipts, American depository receipts or Singapore depository receipts) will trigger the disclosure requirements under the SAST Regulations if they confer voting rights on the acquirers.
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⁶ Regulation 29(1) of the SAST Regulations.

		<p>8. A single stock future would entitle the acquirer to receive shares at a specified future date in the listed company; assuming that such single stock future will be physically settled, the acquisition or holding of such single stock future would trigger the disclosure requirements under the SAST Regulations; and</p> <p>9. issue of new shares pursuant to the exercise of a rights entitlement.</p>
4.	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES⁷</p> <p>c. YES</p> <p>d. YES⁸</p> <p>e. NO⁹</p> <p>c. Disclosure under the SAST Regulations will be required to be made by a short seller of physically settled futures in shares if a disclosure threshold is triggered, since physically settled futures can be considered to fall within the definition of 'convertible security' and the disclosure requirements would accordingly apply.</p>

7 Regulation 29(1) of the SAST Regulations.

8 *Ibid.*

9 Q73 of the SEBI's Frequently Asked Questions on the Takeover Code, available at www.sebi.gov.in/sebi_data/faqfiles/mar-2022/1648620806406.pdf.

<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:</p> <ol style="list-style-type: none"> 1. exercise or cause to be exercised any or all of the rights attached to such share; or 2. receive or participate in any dividend or other distribution in respect of such share.¹⁰
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. 'Persons acting in concert' means persons who, for a common objective or purpose of acquisition of shares or voting rights or gaining control over a company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate for acquiring or agreeing to acquire shares or voting rights in the company or exercise of control over the company. Further certain persons are deemed to be acting in concert, unless the contrary is established.¹¹</p> <p>b. NO, there is no requirement to have a formal arrangement/agreement in place.</p>

¹⁰ S 89(10) of the Companies Act, 2013.

¹¹ Regulation 2(1)(q) of the SAST Regulations.

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES¹²</p> <p>b. YES¹³</p> <p>c. NO¹⁴</p> <p>d. YES¹⁵</p> <p>e. NO¹⁶</p> <p>f. NO¹⁷</p> <p>g. NO¹⁸</p> <p>h. YES¹⁹</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>Any acquirer, together with persons acting in concert with them, must make the disclosure, if they trigger the requirement.²⁰</p>

12 Based on the format for disclosure as provided by SEBI.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 Regulation 29 of the SAST Regulations.

<p>9.</p>	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES</p> <p>b. YES</p> <p>The following types of investors are not required to make disclosures:</p> <ol style="list-style-type: none"> 1. A stock borrower. 2. The disclosure requirements in respect of an encumbrance do not apply: (1) to scheduled commercial banks (ie, the banks licensed to carry out banking activities in India by the Reserve Bank of India (RBI), public financial institutions, housing finance companies and systemically important non-banking financial companies, acting as pledgees in connection with a pledge of shares for securing any indebtedness in the ordinary course of business; and (2) in relation to encumbrance on dematerialised shares created in favour of trading members or clearing members for margin obligation in the ordinary course of stock broking business. 3. The holding of an entity which holds securities in its capacity as custodian is not required to be disclosed since the custodian is not the holder/ owner of the shares and does not exercise the voting rights in relation thereto.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. NO</p> <p>When any person (together with any persons acting in concert) holds five per cent or more of the total shares or voting rights in a listed company and there is a change in such shareholding or voting rights which in aggregate exceeds two per cent of the total shareholding or voting rights in the listed company, then a disclosure is required to be made. Such a disclosure does not constitute a revision of the disclosure statement but instead, is considered a fresh disclosure.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. The contravention of the SEBI Act, 1992 and the rules and regulations made thereunder, including the SAST Regulations, may be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to 25 crore rupees or with both.²¹</p> <p>b. YES. In terms of regulatory sanctions,²² SEBI may debar any person from accessing the capital market or dealing in securities for such period as may be directed. It may also initiate proceedings in accordance with the applicable regulations. It may direct the acquirer to not make any open offer or enter into any transaction that would attract the obligation to make an open offer for a specified time period. SEBI may direct the target company or any depository not to give effect to the transfer of shares.</p> <p>c. NO. Non-disclosure of acquisition of shares and takeovers may result in a penalty which shall not be less than 10 lakh rupees but which may extend to 25 crore rupees or three times the amount of profits made out of such failure, whichever is higher.²³</p> <p>d. YES. SEBI may direct divestment of shares acquired in violation of the disclosure requirement.²⁴ It may also direct transfer of the shares, or any proceeds of a directed sale of shares acquired in violation of the disclosure requirement to the Investor Protection and Education Fund.²⁵ It may, also direct the non-exercise of voting rights.²⁶</p> <p>e. NO</p>
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21 S 24 of the SEBI Act.

22 Regulation 32 of the SAST Regulations.

23 S 15H of the SEBI Act.

24 See n 22 above.

25 See n 22 above.

26 See n 22 above.

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>An MTO occurs in the form of a public announcement of an open offer for acquiring shares of the target company, under the SAST Regulations.</p> <p>b. The requirement for an open offer is triggered when the acquirer (and persons acting in concert) make an acquisition that entitles them to exercise 25 per cent or more of the voting rights in the target company.²⁷</p> <p>Further, any acquirer who has made an acquisition that entitles them to exercise 25 per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, cannot acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company.²⁸</p> <p>Further, acquirer may not acquire, directly or indirectly, control over a target company unless the acquirer makes a public announcement of an open offer for acquiring shares of the target company.²⁹</p> <p>c. The requirement to make an open offer may be triggered through the direct or indirect acquisition of shares, or voting rights, or control.³⁰</p> <p>d. An acquirer cannot acquire shares, or voting rights, or control in breach of the aforementioned threshold without making an open offer.³¹ Hence, the requirement to make an open offer is triggered at the time of the acquisition.</p>
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27 Regulation 3 of the SAST Regulations.

28 *Ibid.*

29 Regulation 4 of the SAST Regulations.

30 Regulation 3, 4 and 5 of the SAST Regulations.

31 *Ibid.*

		<p>e. SEBI is empowered to grant exemption from the obligation to make an open offer for acquiring shares.³² Further, a list of exceptions is provided under Regulation 10 of the SAST Regulations. An indicative list has been set out below:</p> <ol style="list-style-type: none"> 1. acquisitions by private family trusts; 2. acquisitions by the central government or state governments; 3. capital raising and debt restructuring in financially weak companies; and 4. acquisitions in the ordinary course of business by entities such as underwriters registered with SEBI, stock brokers, merchant bankers acting as stabilising agents and scheduled commercial bank, acting as an escrow agent. <p>f. In terms of regulatory sanctions,³³ SEBI may debar any person from accessing the capital market or dealing in securities for such period as may be directed. It may also initiate proceedings in accordance with the applicable regulations. It may direct the acquirer to not make any open offer or enter into any transaction that would attract the obligation to make an open offer for a specified time period.</p> <p>SEBI may direct the target company or any depository not to give effect to the transfer of shares. It may also direct there to not be a disposal of assets of the target company or any of its subsidiaries contrary to the contents of the letter of offer. It may also direct the acquirer to make an open offer at an offer price determined by SEBI and with such interest as may be considered appropriate.</p> <p>Non-disclosure of acquisition of shares and takeovers may result in a penalty which shall not be less than 10 lakh rupees but which may extend to 25 crore rupees or three times the amount of profits made out of such failure, whichever is higher.³⁴</p>
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³² Regulation 11 of the SAST Regulations.

³³ Regulation 32 of the SAST Regulations.

³⁴ S 15H of the SEBI Act.

		<p>SEBI may direct divestment of shares acquired in violation of the disclosure requirement. It may also direct transfer of the shares, or any proceeds of a directed sale of shares acquired in violation of the disclosure requirement to the Investor Protection and Education Fund. It may, also direct the non-exercise of voting rights. SEBI may also direct any person to cease and desist from exercising control acquired over any target company.</p> <p>Further, the contravention of the SEBI Act, 1992 and the rules and regulations made thereunder, including the SAST Regulations, may be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to 25 crore rupees or with both.³⁵</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES</p> <p>b. NO</p> <p>c. NO</p> <p>a. Regulation 8 of the SAST Regulations outlines the methodology for determining the minimum price at which an open offer must be made. The core principle is that the offer price shall not be lower than the price determined by the specific parameters laid out in the SAST Regulations, which vary based on whether the acquisition is direct or indirect.</p> <p>c. The offer price may be paid:³⁶</p> <ol style="list-style-type: none"> 1. in cash; 2. by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert; 3. by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;

³⁵ S 24 of the SEBI Act.

³⁶ Regulation 9 of the SAST Regulations.

		<p>4. by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; and</p> <p>5. a combination of the above.</p>
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	NO

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Ireland

	Which jurisdiction are you covering?	Ireland
1.	At what level(s)/ threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>For an issuer which has Ireland as its home Member State and has shares admitted to trading on an EEA regulated market: three per cent (Irish issuers other than closed-ended investment undertakings) or five per cent (non-Irish issuers or Irish or non-Irish closed-ended collective investment undertakings) (subsequent disclosure thresholds also apply) (the 'Transparency Regulations Disclosure').</p> <p>For Irish public limited companies which are listed on a non-regulated market or unlisted: three per cent (subsequent disclosure thresholds also apply) (the 'Irish Companies Act Disclosure').³⁷</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>Transparency Regulations Disclosure:</p> <p>a. (1) For an Irish-incorporated issuer (other than a closed-ended collective investment undertaking) trading on a regulated market: the shareholder must notify the issuer promptly after the disclosable event and no later than midnight on the second trading day, the first of which shall be the trading day following the date it learns or is informed about the disclosable event; or (2) for a non-Irish incorporated issuer trading on a regulated market or Irish or non-Irish closed-ended collective investment undertaking: the shareholder must notify the issuer or undertaking promptly after the disclosable event and no later than midnight on the fourth trading day, the first of which shall be the trading day following the date it learns or is told about the disclosable event.</p>

³⁷ Note: For the purpose of responding to these questions, we have assumed: (1) no additional disclosure obligations are contained in the target company's constitution; (2) that any stake-building exercise does not implicate the disclosure requirements of the Irish Takeover Rules (including the Irish Takeover Rules' Substantial Acquisition Rules); and (3) any issuer-initiated disclosure powers (and the regulations related to same) are not relevant.

		<p>Companies Act Disclosure:</p> <ul style="list-style-type: none"> a. NOtification must be made within five business days following the day on which the obligation to notify arises. b. NO specific form is prescribed for a Companies Act Disclosure, but it must contain: (1) the name and address of the reporting person; (2) the name of the relevant Irish public limited company and the class of its shares to which the notification relates; (3) the number of those shares in which the notifier was interested immediately after the obligation to notify arose or, where the notifier no longer has a notifiable interest in those shares, the fact that they no longer have that interest; and (4) where an interest is being notified (x) the name and address of each registered holder of shares to which the notification relates and (y) the number of those shares held by each such registered holder.
<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <ul style="list-style-type: none"> a. Voting shares? b. Non-voting shares? c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?) d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)? 	<p>Transparency Regulations Disclosure:</p> <ul style="list-style-type: none"> a. YES b. NO c. This will depend on the terms of the instrument. d. This will depend on the terms of the instrument. e. This will depend on the terms of the instrument/ arrangement. <p>Companies Act Disclosure:</p> <ul style="list-style-type: none"> a. YES b. NO c. This will depend on the terms of the instrument. d. This will depend on the terms of the instrument. e. This will depend on the terms of the instrument/ arrangement.

	<p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	
4.	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>All of the above may trigger a disclosure requirement (albeit depending on the specific circumstances in the case of b and c).</p>
5.	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Any and all of a, b and c may trigger a disclosure requirement (albeit this will depend on the specific circumstances).</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. The Companies Act Disclosure regime covers any agreement or arrangement, whether or not legally binding, which involves undertakings, expectations or understandings that interests in shares will be acquired and that they will be subject to relevant restrictions while the agreement subsists. This may include groups of persons acting in concert to prepare the way for a takeover offer for the company or to support a pending takeover offer.</p> <p>b. NO, this may be an understanding rather than a formal arrangement.</p> <p>For takeover purposes, the term ‘acting in concert’ has a specific and wide-ranging meaning (and includes agreements and understandings, whether formal or otherwise). The Irish Takeover Rules specifically provide as follows: ‘Two or more persons will be deemed, for the purposes of the Act, to be ‘acting in concert’ as respects a takeover (excluding a takeover bid) or other relevant transaction ‘if they co-operate on the basis of an agreement, either express or tacit, either oral or written, aimed at: (1) either: (i) the acquisition by any one or more of them of securities in the relevant company concerned; or (ii) the doing, or the procuring of the doing, of any act that will or may result in an increase in the proportion of securities in the relevant company concerned held by any one or more of them; or (2) either: (i) acquiring control of the relevant company concerned; or (ii) frustrating the successful outcome of an offer made for the purpose of the acquisition of control of the relevant company concerned’.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>Transparency Regulations Disclosure:</p> <p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p> <p>f. NO</p> <p>g. NO</p> <p>h. Will depend on specific circumstances.</p> <p>Companies Act Disclosure:</p> <p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p> <p>f. NO</p> <p>g. NO</p> <p>h. Will depend on specific circumstances.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>This will depend on the circumstances – it could be any or all of the above.</p>

<p>9.</p>	<p>Are there exceptions/ short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>Transparency Regulations Disclosure:</p> <p>a. YES (no short form available).</p> <p>b. NO (assuming no right to direct the investment or voting decisions of the money/asset manager).</p> <p>c. YES (including exemptions for (1) clearing and settlement arrangements; (2) custodian/nominee arrangements; (3) collateral taker arrangements; (4) market making; (5) trading books of credit institutions and investment firms; (6) the European Central Bank; (7) subsidiary undertakings; and (8) stabilisation activities conducted on accordance with the Market Abuse Regulation (MAR)).</p> <p>Companies Act Disclosure:</p> <p>a. YES (no short form available).</p> <p>b. YES (depending on the circumstances, with no short form available).</p> <p>c. NO.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>Transparency Regulations Disclosure:</p> <p>a. YES – subsequent notifications required in case of increases or decreases in ownership.</p> <p>b. Each one per cent increment in excess of (or below) the initial notification in the case of Irish incorporated issuers (other than closed-ended collective investment undertakings); each five per cent increment in excess of (or below) the initial notification in the case of non-Irish incorporated issuers or Irish or non-Irish closed-ended collective investment undertakings.</p> <p>c. N/A</p> <p>d. N/A</p> <p>e. Same as response to Question 2(a) above.</p> <p>f. N/A</p> <p>Companies Act Disclosure:</p> <p>a. YES – subsequent notifications required in case of increases or decreases in ownership.</p> <p>b. Each one per cent increment in excess of (or below) the initial notification.</p> <p>c. N/A</p> <p>d. N/A</p> <p>e. Same as response to Question 2(A) above.</p> <p>f. N/A</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES (criminal offence for which if convicted on indictment the person is liable to a fine not exceeding €1m, imprisonment for a term not exceeding five years or both).</p> <p>b. YES (Central Bank of Ireland has power to: (1) in the case of legal entities, impose administrative financial sanctions of the higher of: (i) up to €10m or five per cent of the total annual turnover; or (ii) up to twice the amount of the profits gained or losses avoided because of the breach (where those can be determined); or for a natural person, impose administrative financial sanctions of the higher of: (i) up to €2m; or (ii) up to twice the amount of the profits gained or losses avoided because of the breach (where those can be determined); (2) issue a public statement indicating the natural person or legal entity responsible and the nature of the breach; (3) impose an order requiring the natural person/legal entity responsible to cease the conduct constituting the breach and to desist from any repetition of the conduct; and (d) suspend the exercise of voting rights.</p> <p>c. YES (see above).</p> <p>d. YES (see above).</p> <p>e. NO</p> <p>Companies Act Disclosure:</p> <p>a. YES (criminal offence for which if convicted a person shall be liable on summary conviction to a fine of up to €5,000 or imprisonment for a term not exceeding six months or both)</p> <p>b. NO</p> <p>c. NO</p> <p>d. YES (following a failure to notify (except in the case of a notification arising as a result of a cessation of an interest in share capital), no right or interest in respect of any shares in the company concerned held by the defaulting party will be enforceable by the defaulting party by action or legal proceedings).</p> <p>e. NO</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES, 30 per cent.</p> <p>c. Securities/instruments conferring voting rights.</p> <p>d. All of the above and others (including share buybacks which increase a holders' position without any action on their part).</p> <p>e. YES (there are a number, but the primary exception is for a 'whitewash' (where the Irish Takeover Panel consents to an ordinary resolution being put to independent shareholders (ie, those unrelated to the potential offeror) to approve the relevant action with requiring an MTO)).</p> <p>f. The Irish Takeover Panel has wide-ranging powers to issue rulings, directions, advice, admonitions or public or private censures (and to seek court orders enforcing its rulings and directions).</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. Except with the consent of the Irish Takeover Panel, the price offered on an MTO must be a price per share which is not less than the highest value of the consideration per share paid by the offeror or any person acting in concert with it for shares of the offeree of that class during the period beginning 12 months prior to the announcement by the offeror of a firm intention to make that offer and ending on the date on which the offer closes for acceptance. Further rules apply if shares of the target have been acquired for non-cash consideration during the 12-month lookback period.</p> <p>b. Except with the consent of the Irish Takeover Panel, an MTO must only be subject to an acceptance condition of 50 per cent (aggregated with the pre-MTO holding) and (if applicable) any required Irish or EU competition consent.</p> <p>c. YES (except with the consent of the Irish Takeover Panel).</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>YES.</p> <p>Under the Irish Takeover Rules, once a bidder is publicly identified, the bidder must 'put-up' by announcing an offer or 'shut-up' by announcing it does not intend to make an offer by 1700 on the 42nd day following the announcement identifying the bidder. If the bidder does not announce a firm intention to make an offer for the target at the end of this period, it will be prevented from making a further approach to the target (among other things) for a six-month period (subject to certain exceptions or the Irish Takeover Panel's consent). Extensions to the put up or shut up (PUSU) deadline require consent of the target's board and the Irish Takeover Panel.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Italy

	Which jurisdiction are you covering?	Italy
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Under the Italian legal framework (in particular, Legislative Decree No 58 of 24 February 1998, the Consolidated Financial Act (CFA), and Consob Regulation No 11971 of 14 May 1999 (the 'Issuers' Regulation')), an individual or entity holding a shareholding in a listed company is required to disclose its shareholding when:</p> <ul style="list-style-type: none"> a. it acquires a shareholding in excess of (1) three per cent in the voting shares of a listed company that does not qualify as a 'small or medium size company' (ie, listed companies whose market capitalisation exceeds €1bn); or (2) five per cent in the voting shares of a listed company that qualify a 'small or medium size company' (ie, listed companies whose market capitalisation is below €1bn); or b. it reaches a shareholding exceeding, or its shareholding falls below, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent, 66.6 per cent or 90 per cent of the listed company's voting share capital. <p>Please note that for the purpose of calculating the relevant shareholding represented by voting shares held by a person, the following shall be taken into consideration:</p> <ul style="list-style-type: none"> 1. voting shares owned by such person, irrespective of whether the relative voting rights are exercisable by such person or by a third party or are suspended; 2. voting shares not owned by such person, but in relation to which it is entitled to exercise voting rights in its capacity as depositary or proxy holder with discretionary power to exercise voting rights over such shares, pledgee or usufructuary of such shares or as the holder of voting rights pursuant to an agreement providing for the temporary transfer of such voting rights;

		<p>c. it reaches an interest represented by financial instruments equal to or exceeding, or its interest falls below, the following percentage thresholds: five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 66.6 per cent. For the purposes of this provision, 'financial instruments' include: (1) any 'potential shareholding' (ie, financial instruments that grant the right to acquire underlying shares on the holder's own initiative and through a physical settlement); and (2) any 'other long position' in derivatives, irrespective of whether such instrument provides for a cash or physical settlement; please refer to Question 3 for further information; or</p> <p>d. it reaches an 'aggregate shareholding' (ie, the sum of its shareholding represented by shares and its shareholding represented by 'financial instruments') equal to or exceeding, or its 'aggregate shareholding' falls below, the following percentage thresholds: five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 66.6 per cent.</p>
<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>The duty to disclose a material shareholding is fulfilled by notifying both Consob (ie, the Italian stock market authority) and the listed company, using the standard form provided for under Consob regulations. Such notification must be made as soon as possible and, in any case, no later than four trading days as of the day in which the obliged person is aware of the relevant transaction (irrespective of the settlement date); such knowledge is presumed to be gained on the date the transaction is entered into or, in any case, no later than two trading days thereafter.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. Voting shares: YES.</p> <p>b. Non-voting shares: NO.</p> <p>c. Derivative instruments giving a right to acquire share (eg, options or convertible instruments): YES. Italian law considers relevant not only actual shareholdings but also so-called <i>potential shareholdings</i>. These include positions held through financial instruments that give the holder, on their own initiative, either an unconditional right or the discretion to acquire the underlying shares through physical settlement. Such instruments are taken into account even if they have not yet been exercised, as they may still allow the holder to exert influence over the company or to acquire voting rights at a later stage.</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (eg total return swaps or contract of difference): YES. Italian law also considers relevant so-called <i>other long positions</i>, which include financial instruments which do not entitle the holder to acquire the underlying shares, but provide an economic exposure positively correlated to the performance of those shares. Even though such instruments do not involve the physical delivery of the underlying shares or confer voting rights, they are taken into account for disclosure purposes, as they reflect a financial interest equivalent to holding the shares.</p> <p>e. Instruments which give right to vote but no economic benefit: YES. See Question 1.</p> <p>f. Other type of instruments: Disclosure is also required in connection with financial instruments that entitle the holders to appoint a member of the board of directors or internal control body of the listed company. The obligation arises either when a holder acquires or loses the ability to unilaterally appoint such a member, or when the holder's interest in a specific category of such instruments crosses (upwards or downwards) the thresholds of ten per cent, 25 per cent, 50 per cent or 75 per cent.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. Acquisition of beneficial ownership: YES. For further information please refer also to Questions 1 and 5.</p> <p>b. Acting in concert or forming a group in relation to the securities in question: Under Italian law, there are no specific disclosure obligations triggered solely by the fact of acting in concert for the purposes of the transparency regime on significant shareholdings. However, disclosure obligations do arise when:</p> <ol style="list-style-type: none"> 1. the persons acting in concert enter into a shareholders' agreement relating to a listed company or its parent company, in which case specific disclosure and publication requirements apply (see also Questions 6 and 7); and 2. a person or entity acquires a shareholding exceeding ten per cent, 20 per cent or 25 per cent of the share capital of a listed company, in which case they must submit a declaration of intent disclosing, among other things, whether they are acting in concert with other parties (see also Question 7). <p>c. Securities lending: YES. In the case of shares subject to securities lending or repurchase agreements (<i>contratti di riporto</i>), the disclosure obligation applies to both counterparties – namely, the lender and the borrower in lending transactions, and the transferor (<i>riportato</i>) and the transferee (<i>riportatore</i>) in repurchase agreements. The voting shares involved in such transactions must be taken into account by each party when calculating their relevant shareholdings. However, the borrower or transferee may be exempt from disclosure where it does not exercise the voting rights and falls within one of the categories set out under the Issuer's Regulation – including, <i>inter alia</i>, acting as a settlement agent, a custodian operating solely on the instructions of the shareholder, a market maker holding less than ten per cent of the share capital of the relevant listed company in the ordinary course of its activity, or an entity acquiring shares for stabilisation purposes.</p>
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		<p>d. Sale: YES. See Question 1.</p> <p>e. Mere passive reach of threshold (eg a stock buyback): YES. Disclosure obligations also apply in the case the relevant shareholding thresholds are exceeded not through direct purchases or subscriptions of shares by the shareholder, but as a result of changes in the issuer's share capital or voting rights structure. This includes, for example, increases due to share buyback programmes or the granting of enhanced voting rights (<i>maggiorazione del diritto di voto</i>) under applicable regulations. These passive events must be taken into account for the purposes of the transparency regime.</p> <p>f. Other: See Question 3 f).</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Italian law does not provide a standalone definition of 'beneficial ownership' for disclosure purposes. Nonetheless, the disclosure obligation is not limited to the legal owner of voting shares, but also applies to any person who, by virtue of specific legal arrangements or instruments, has the power to exercise influence over a listed company – whether through voting rights or the right to acquire shares or financial instruments, regardless of formal ownership.</p> <p>Such situations include, for example, instances where voting rights are exercisable by a person acting as depositary, proxy holder, pledgee, or usufructuary, or pursuant to an agreement for the temporary assignment of such rights. The obligation also arises in connection with the holding of derivative instruments that confer either: (1) the unilateral right to acquire shares (so-called 'potential shareholdings'); or (2) an economic exposure equivalent to that of holding shares (ie, 'other long positions'), even where such instruments do not carry voting rights.</p> <p>Please refer to Questions 1, 3 and 4 for further information.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. According to Italian law, two or more persons or entities are deemed to act in concert when they cooperate between themselves with the purpose of gaining, maintaining or strengthening control over a listed company. In particular, the following persons or entities are presumed to act in concert:</p> <ol style="list-style-type: none"> 1. parties to a shareholders’ agreement concerning a listed company or a company controlling the listed company; 2. a person or an entity, its controlling and controlled entities, and the entities under common control; and 3. a company and its directors and general managers (<i>direttori generali</i>). <p>b. A formal or written agreement is not required in order to establish that parties are acting in concert. Such cooperation may be explicit or implicit, and may arise from oral understandings, informal arrangements, or coordinated behaviour. Even in the absence of a formal agreement, parallel conduct aimed at exercising or consolidating influence or control over a listed company may be sufficient to qualify as acting in concert.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p><i>General disclosure obligations of significant shareholding</i></p> <p>The notification related to the acquisition or variation of a significant shareholding in a listed company must include, <i>inter alia</i>:</p> <ul style="list-style-type: none"> • the number and percentage of voting shares or financial instruments held by the declarant; • the nature of the ownership (eg, full ownership, pledge, usufruct and asset management); • the date and type of transaction that triggered the disclosure; • the identity of the listed company; • the reason for the notification; and • the percentage previously held, if applicable. <p>In addition, where a person or entity acquires a shareholding exceeding ten per cent, 20 per cent or 25 per cent, they are required to submit also a declaration of intent (unless exempt), outlining their objectives for the following six months. The declaration must include:</p> <ol style="list-style-type: none"> 1. the source of funds for the acquisition; 2. whether the person is acting in concert with others; 3. any intention to acquire control or influence over the listed company; 4. any existing shareholders' agreements; 5. whether any changes to the board of directors or internal control body are envisaged. <p><i>Specific disclosure obligations relating to shareholders' agreements</i></p> <p>Disclosure obligations also apply to shareholders' agreements concerning listed companies or their parent companies, where the aggregate shareholding subject to the agreement exceeds three per cent (or five per cent for listed companies with a market capitalisation below €1 bn).</p>
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		<p>In such cases, the following formalities must be fulfilled within five days of the agreement's execution:</p> <ol style="list-style-type: none"> 1. notification to Consob and the listed company of the shareholders' agreement; 2. publication of a summary extract in a national daily newspaper; 3. filing of the agreement with the Companies Register; 4. publication of essential information on the issuer's website. <p>The essential information must include:</p> <ul style="list-style-type: none"> • the name of the listed company whose securities are covered by the agreement; • the number and percentage of voting rights and financial instruments contributed under the agreement; • the identity of the parties; • the content and duration of the agreement, including the date of execution and effectiveness; and • the Companies Register where the agreement is filed. <p>Subsequent amendments to shareholders' agreements are subject to specific publication requirements:</p> <ul style="list-style-type: none"> • material amendments to the shareholders' agreement must be disclosed by publishing a new extract and updating the essential information on the issuer's website within five days of the amendment's effective date; • amendments limited to the number of voting rights or financial instruments contributed must also be reflected in the updated essential information published on the same website, within five days of the change; however, where such numerical changes do not result in the crossing of any relevant threshold (ie, three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent, 66.6 per cent, 90 per cent or 95 per cent), the updated disclosure may instead be made on an annual basis, within five days of the end of the financial year, indicating the position as at year-end; and
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		<ul style="list-style-type: none"> events such as withdrawals, renewals or termination of the agreement must also be disclosed by publishing a notice within five days from the occurrence of the relevant event.
8.	Who has to disclose? a. Direct/legal owner b. beneficial owner c. Parties acting in concert d. Other?	a. Direct/legal owner: YES. For further information please refer also to Question 5. b. Beneficial owner: YES. For further information please refer also to Question 5. c. Parties acting in concert: NO, except in cases where the parties acting in concert enter into a shareholders' agreement. For further information please refer also to Questions 6 and 7.
9.	Are there exceptions/ short form of disclosure for certain type of investors? a. Must money/asset managers disclose their positions? if YES: can they use a short form? b. Must passive Investors disclose their positions? if YES: can they use a short form? c. Other exceptions/short form of disclosure?	a. Obligation for money/asset manager to disclose their positions: NO. The exemptions under Italian law do not depend on the type of investor but on the specific activity carried out (see point c below). b. Obligation for passive investors to disclose: NO. c. Other exceptions/short form of disclosure: The following are not subject to this disclosure obligation (Article 119-bis of the Issuers' Regulation): <ul style="list-style-type: none"> persons who hold shares exclusively for the purpose of clearing and settling transactions; persons who hold shares in carrying out share custody services; and persons who acquire or dispose of shares or other interests in financial instruments below the ten per cent threshold as market makers, on condition that certain additional conditions are met.

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. Trigger for revision: YES.</p> <p>b. The increase in ownership that triggers a revision: Disclosure obligations are triggered whenever a person exceeds the three per cent threshold – or five per cent in the case of small and medium-sized enterprises (SMEs) – of voting rights in a listed company.</p> <p>Additional disclosure obligations apply upon reaching or exceeding the subsequent thresholds of five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent, 66.6 per cent and 90 per cent, and when the holding falls below any of the relevant thresholds.</p> <p>c. When a change in intent/purpose imposes a revision: In the event of a change in intent in the six months from submission of the declaration of intent due to objective circumstances, the declaration made upon exceeding a relevant threshold must be amended accordingly (Article 120, paragraph 4 bis, of the CFA).</p> <p>d. Other triggers: NO.</p> <p>e. How soon the revision must be filed: The disclosure obligation arises immediately upon reaching the relevant threshold and must be fulfilled within four trading days from the date the person becomes aware of the transaction giving rise to the obligation, regardless of the execution date (Article 121 of the Issuer’s Regulation).</p> <p>f. Any moratorium: NO.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. Criminal sanctions: NO, unless the conduct constituting a violation contributes to the commission of a criminal offence under applicable law, for example, market abuse.</p> <p>b. Regulatory sanctions: YES. Article 193 of the TUF lays out three types of sanctions, applied alternatively:</p> <ul style="list-style-type: none"> • publication (by the violating party) of a public statement indicating the nature of the violation; • a fine; or • an order to remedy the violation and to refrain from committing further violations. <p>c. Damages: The CFA and the Issuers' Regulation do not include any provisions entitling a party that has suffered damage from a violation of disclosure requirements to claim compensation; however, a party may seek damages under general civil liability rules on condition that all the requirements under Italian law are met.</p> <p>d. Equitable relief: In the event of a violation of the disclosure obligation, none of the voting rights attached to the entire shareholding may be exercised (Article 120 of the CFA).</p> <p>e. Right of action: CONSOB is vested with the authority to take action and enforce all provisions concerning the disclosure obligation.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. Existence of MTO requirement in the national jurisdiction: YES.</p> <p>b. Level/threshold: An MTO must be launched by:</p> <ul style="list-style-type: none"> • anyone who, as a result of acquisitions or an increase in voting rights, comes to hold a shareholding exceeding 30 per cent of the company's capital or voting rights representing more than 30 per cent thereof (Article 106, paragraph 1, CFA); • in companies other than SMEs, anyone who, as a result of acquisitions, comes to hold a shareholding exceeding 25 per cent, in the absence of any other shareholder holding a higher stake (Article 106, paragraph 1-bis of the CFA); • anyone who holds a shareholding of between 30 per cent and 50 per cent and who carries out acquisitions exceeding five per cent of the company's capital – or whose voting rights increase by more than such threshold – within less than 12 months (Article 106, paragraph 3 of the CFA); • any offeror who, following a totalitarian tender offer, comes to hold a stake of at least 95 per cent of the capital represented by securities in an Italian listed company; this obligation applies over the remaining securities from any holder who so requests (Article 108, paragraph 1 of the CFA); and • anyone who comes to hold a shareholding exceeding 90 per cent of the capital represented by securities admitted to trading on a regulated market; this obligation applies over the remaining securities admitted to trading on a regulated market from any holder who so requests, unless a sufficient free float to ensure the regular course of trading is restored within 90 days (Article 108, paragraph 2 of the CFA). <p>c. Instrument/securities that trigger MTO: An MTO is triggered by both shareholdings and voting rights.</p> <p>d. Transactions/events/activities that trigger MTO (acquisition of beneficial ownership, acting in concert/ forming a group with other owners of securities/ bidders, etc): MTOs are triggered by direct or indirect acquisitions or by increases in shareholdings and voting rights (Article 106, paragraph 1 of the TUF).</p>
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		<p>Securities held by persons acting together with the offeror must be taken into account when calculating the relevant thresholds.</p> <p>e. Exceptions/opting-outs/opting-in: YES.</p> <p>Under Article 49 of the Issuers' Regulation, the obligation to launch an MTO is not triggered if:</p> <ol style="list-style-type: none"> 1. another shareholder holds, or several shareholders hold jointly, the majority of voting rights that can be exercised at the ordinary shareholders' meeting; 2. the relevant threshold is exceeded: <ol style="list-style-type: none"> (i) in the event of a recapitalisation of a listed company or other capital strengthening measures, and the company is in a crisis; (ii) exclusively through the subscription of a capital increase of the listed company, with exclusion of preemptive rights, aimed at enabling, including through a debt restructuring, the recovery of the company's indebtedness and ensuring the rebalancing of its financial position, carried out in implementation of a recovery plan that meets certain requirements; and (iii) in the event of a crisis situation, on condition that: (a) if the transaction falls within the competence of the shareholders' meeting, the related resolution is approved without opposition by the majority of shareholders present at the shareholders' meeting, excluding the purchaser and shareholders holding a majority shareholding, even if relative, if over ten per cent; and (b) if the transaction is not subject to a shareholders' meeting resolution, it is approved by a majority vote of shareholders other than those indicated in point (a), on condition that they have expressed their opinion by means of a statement contained in a special form prepared and made available by the company;
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		<ol style="list-style-type: none"> 3. the shareholding is acquired as a result of a transfer between companies, whereby the same entity or entities hold the majority of the voting rights exercisable at ordinary shareholders' meetings either jointly and/or indirectly through a subsidiary; alternatively, if it is acquired as a result of a transfer between one of these companies and such entities; 4. the threshold is exceeded as a consequence of the exercise of option, subscription or conversion rights; 5. the threshold is exceeded by a reduction in the total number of voting rights that can be exercised on matters that are relevant for triggering the obligation to launch an MTO, in companies whose articles of association allow for increased voting rights or envisage the issue of multiple voting shares; 6. the purchaser of the securities exceeding the relevant thresholds undertakes to transfer the securities at stake to unrelated parties or reduce the excess voting rights within 12 months, committing not to exercise those rights; 7. the relevant thresholds are exceeded as a result of the purchase of derivative financial instruments, in which case the purchaser undertakes to sell the derivatives or excess securities to unrelated parties within six months, and agrees not to exercise voting rights in excess of the exceeded threshold during the same period; 8. the threshold is exceeded as a consequence of mergers or demergers approved by a resolution of the company's shareholders' meeting, the securities of which would otherwise be subject to an offer, without the opposition of the majority of the attending shareholders; and 9. it is the result of inheritance or gratuitous transfers between individuals. <p>f. Sanctions in case the MTO is not launched or completed: In the event of breach of the obligation to launch an MTO, the voting rights attached to the entire shareholding cannot be exercised and the voting rights exceeding the relevant percentages must be disposed of within 12 months (Article 110, paragraph 1 of the CFA).</p>
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		<p>If the voting rights are nonetheless exercised, the resulting resolution may be challenged (Article 14, paragraph 5 and 6 of the CFA).</p> <p>Moreover, any breach of the obligation to launch an MTO is subject to an administrative fine of no less than €25,000 and no more than the total amount payable by the offeror, or the amount that would have been payable had the offer been launched (Article 192, paragraph 1 of the CFA).</p>
13.	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. Restrictions on formal bid pricing: YES. An MTO must be launched at a price not lower than the highest price paid by the offeror (and the persons acting together with them) during the 12 months preceding the notification of the offer to Consob for purchases of securities of the same class.</p> <p>If no purchases of securities of the same class have been made during this period, the price must not be less than the average market price over the preceding 12 months or the lowest available period (Article 106, paragraph 2 of the TUF).</p> <p>Within the context of totalitarian tender offers, the consideration: (1) must be equal to that of the previous totalitarian tender offer, on condition that, in the case of a voluntary tender offer, the offeror has acquired, following the offer, securities representing no less than 90 per cent of the capital with voting rights included in the offer; or (2) must be determined by Consob taking into account the prices of any previous offer or the market price in the six months preceding the offer's announcement (Article 108, paragraphs 3 and 4 of the CFA).</p> <p>b. Specific conditions to MTO: NO, except for regulatory conditions, for example, FDI or antitrust conditions.</p> <p>c. Consideration to shareholders, if only cash: NO. The consideration for the MTO may consist in whole or in part of securities (Article 106, paragraph 2-bis, CFA).</p>
14.	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	NO

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Japan

	Which jurisdiction are you covering?	Japan
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>When a person (alone or together with joint holders) acquires more than five per cent of the total voting shares of a listed company, they must file a large shareholding report with the Financial Services Agency of Japan (FSA).</p> <p>Furthermore, if there is a change of one per cent or more in the shareholding ratio or a material change in any of the disclosed items, amendments to the Large Shareholding Reports must be filled.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Within five business days of acquisition or change.</p> <p>b. Both of a large shareholding reports or amendments thereto are submitted electronically via the EDINET (statutory digital disclosure system for listed companies in Japan) with FSA, and are publicly available on EDINET.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES.</p> <p>b. NO (unless the non-voting shares are convertible for voting shares).</p> <p>c. YES. No limitation on exercisable or convertible period.</p> <p>d. NO.</p> <p>e. Generally, YES. Under Japanese laws, a borrower would acquire ownership over the shares.</p> <p>f. Treasury shares held by the reporting party are excluded.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES.</p> <p>b. YES.</p> <p>c. Generally, YES. Under Japanese laws, a borrower would acquire ownership over the shares.</p> <p>d. Generally, NO. If the shareholding ratio would decrease by one per cent or more, amendments to the large shareholding reports should be filed.</p> <p>e. NO.</p> <p>f. None specifically.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>f. NO clear definition under the law but generally understood that the voting rights are the most important factor.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Acting in concert or forming a group refers to parties who have an agreement, explicit or implicit, to collectively purchase or sell of shares or correctively exercise voting rights. This includes formal agreements, informal arrangements, or consistent parallel actions recognised as coordinated.</p> <p>Certain affiliates based on capital relationship (eg, 20 per cent or more of shareholders) or biological relationship (eg, parents and children) should be also deemed as a group in the context of large shareholding reports even if there are no agreements above.</p> <p>b. NO. Formal agreements are not always required. Parallel or concerted action may suffice if intent and coordination are evident.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES.</p> <p>b. YES.</p> <p>c. YES.</p> <p>d. YES.</p> <p>e. YES. the purpose of the holding must be stated. It is mandatory to describe the purpose, such as pure investment, policy investment or engaging in significant proposal activities.</p> <p>f. YES.</p> <p>g. YES.</p> <p>h. YES.</p> <p>i. Basic information of the filer (name and address), and acquisition and disposal transactions during the past 60 days must be included.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES.</p> <p>b. YES.</p> <p>c. YES.</p> <p>d. None specifically.</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES. They can use a short form to avoid duplicate reporting when the same manager operates multiple funds, simplified or aggregated reporting forms may be accepted in practice.</p> <p>b. YES. They can use a short form where the purpose is long-term, non-interventionist investment, simplified or aggregated disclosures may be allowed.</p> <p>c. None specifically.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES.</p> <p>b. Change reports must be filled when ownership changes by one per cent or more.</p> <p>c. YES. Changes in holding purpose require filing an amendment to the large shareholding report even without further acquisitions.</p> <p>d. YES. Changes in acting-in-concert relationships (affiliates with special interests) or group formation also trigger amendments to the large shareholding report filings.</p> <p>e. Within five business days of the triggering event.</p> <p>f. NO. There is no moratorium or acquisition suspension rule until or after disclosure.</p>
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. Any person who intentionally or negligently violates the reporting obligations related to large volume holdings may be punished by imprisonment for up to two years, a fine of up to JPY 3m, or both.</p> <p>b. YES. The FSA may issue business improvement orders or administrative guidance.</p> <p>c. YES. Private parties can claim damages in civil lawsuits.</p> <p>d. NO.</p> <p>e. Enforcement of criminal or regulatory sanction is primarily by the regulator (FSA or Prosecutor), but private parties may sue for damages.</p>

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES.</p> <p>b. Generally, acquisition of more than one-third of voting rights through out-of-market triggers the MTO.</p> <p>c. Voting shares, including ordinary shares, voting preferred shares, and convertible instruments (eg, stock acquisition rights) that confer voting rights upon exercise or conversion.</p> <p>d. Generally, the following transactions/events trigger the MTO obligation:</p> <ul style="list-style-type: none"> • acquisition so that the shareholding ratio of the acquirer and its affiliates would become five per cent or more of the total voting rights (excluding acquisition from ten or less sellers within 60 calendar days); or • acquisition so that the shareholding ratio of the acquirer and its affiliates would become one third or more (after the amendment to the rule in 2025, 30 per cent or more) of the total voting rights Note: Acquisition does not include the issuance of new shares by third-party allotment but includes purchase on off-market transactions (after the amendment to the law in 2025, purchase on-market transactions are also subject to the MTO.). <p>e. The following specific exemptions or exceptions apply:</p> <ul style="list-style-type: none"> • transfers of shares pursuant to mergers, share exchanges or other corporate actions; • acquisition from persons who have been affiliates of the acquirer for more than one year; and • acquisition by the acquirer whose shareholding ratio is more than 50 per cent before the acquisition. <p>f. The relevant ownership threshold (one-third of voting rights) may result in the following sanctions:</p> <ul style="list-style-type: none"> • Violations of the Financial Instruments and Exchange Act related to MTO obligations can lead to criminal penalties up to imprisonment for three years and/ or fines of JPY 3m, administrative penalties roughly equivalent to 25 per cent of the market price multiplied by the number of the shares acquired in violation of the laws, and civil damage.
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. NO.</p> <p>b. NO. But the acquirer may set up the maximum number of the shares to be acquired through a takeover bid (TOB) (should be two thirds or less of the shareholding ratio) and/or the minimum number of the shares to be acquired through the TOB.</p> <p>c. NO. Consideration can be cash, shares or other securities.</p> <p>d. The tender offer period should be 20 business days. The acquirer and its affiliates should not purchase the shares other than the TOB during the tender offer period. The acquirer should submit the tender offer registration statements and deliver to the tendering shareholders the tender offer prospectus and should be subject to legal liability if these contain material misstatements.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>No, Japan does not have a formal 'put up or shut up' mechanism. However, if the investor makes public its plan to purchase large number of the shares in a listed company without sincere intention or high capability, it may be subject to criminal liability for illegal circulation of false rumours.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Luxembourg

	Which jurisdiction are you covering?	Luxembourg
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Under Luxembourg law, the disclosure of major holdings in listed companies is governed by the Law of 11 January 2008 on transparency requirements for issuers of securities (the 'Transparency Law'),³⁸ which implements Directive 2004/109/EC (the 'Transparency Directive').³⁹</p> <p>A shareholder is required to notify both the issuer, whose shares (including depositary receipts representing shares) are admitted to trading on a regulated market and for which Luxembourg is the home Member State and to which voting rights are attached, and the Luxembourg Financial Sector Supervisory Commission (Commission de Surveillance du Secteur Financier or CSSF) (hereafter referred to as the 'Issuer' throughout this questionnaire) whenever its proportion of voting rights reaches, exceeds or falls below certain thresholds as a result of acquisition or disposal of shares or voting rights.</p> <p>The relevant thresholds for disclosure are in Article 8(1) of the Transparency Law:</p> <ul style="list-style-type: none"> • five per cent; • ten per cent; • 15 per cent; • 20 per cent; • 25 per cent; • 33.33 per cent; • 50 per cent; and • 66.67 per cent.

38 Law of 11 January 2008 (consolidated version) on transparency requirements for issuers.

39 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

		<p>The voting rights shall be calculated on the basis of all the shares, including depositary receipts representing shares, to which voting rights are attached even if the exercise thereof is suspended. Moreover, this information shall also be given in respect of all the shares, including depositary receipts representing shares, which are in the same class and to which voting rights are attached.</p>
<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure:</p> <p>Under the Transparency Law (Articles 8 to 12) and in accordance with CSSF Circular 08/337,40 the notification to the Issuer and the filing with the CSSF (cf point 5 (c) of this circular) 'shall be made promptly and simultaneously and at the latest within six trading days following a transaction or within four days following the disclosure of the information by the issuer of an event changing the breakdown of voting rights'.</p> <p>Also, 'the issuer of shares shall publish as soon as possible all the information contained in a notification of a shareholder. In accordance with Article 11 (6), the publication shall be made no later than three trading days upon receipt of the notification'.</p> <p>This period allows the shareholder to assess whether the threshold has been crossed and to prepare the necessary notification. The Issuer must then disclose the information to the public as soon as possible, but no later than three trading days after receipt of the notification.</p> <p>b. Form of disclosure:</p> <p>The notification by the shareholder must be made using the standard form provided by the CSSF (available on the CSSF website) and sent to both the Issuer and the CSSF. The notification is not made by press release or insider report, but by completing and submitting the prescribed form. The Issuer is then responsible for making the information public, typically via a press release or publication on its website, in accordance with the requirements of the Transparency Law and CSSF Circular 08/337.</p>

40 Circular CSSF 08/337

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>The following types of instruments/securities are counted towards the disclosure thresholds under the Transparency Law:</p> <p>a. Voting shares? YES.</p> <p>All shares carrying voting rights are counted towards the disclosure thresholds (Article 8 (1) and (2) of the Transparency Law).</p> <p>b. Non-voting shares? NO.</p> <p>Non-voting shares are generally not counted and are not mentioned in the indicative list of ESMA about financial instruments that are subject to notification, unless they confer voting rights in specific circumstances (eg, preferred shares with conditional voting rights).</p> <p>c. Derivative instruments giving a right to acquire shares (such as options or convertible instruments)? YES.</p> <p>These are counted only if they satisfy any of the conditions set out in points (a) or (b) of the first subparagraph of paragraph 1 of Article 12 of the Transparency Law:</p> <p>‘(1) The notification requirements laid down in Article 8 shall also apply to a natural person or legal entity who holds, directly or indirectly: (a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market; (b) financial instruments which are not included in point (a) but which are referenced to shares referred to in that point and with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement’.</p>
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		<p>The following instruments shall be considered to be financial instruments provided they satisfy any of the conditions set out in points a or b: (1) transferable securities; (2) options; (3) futures; (4) swaps; (5) forward rate agreements; (6) contracts for differences; and (7) any other contracts or agreements with similar economic effects which may be settled physically or in cash.</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contracts for difference)? YES.</p> <p>These are counted if they provide a long economic exposure to voting shares, even without physical settlement (Article 12 (1) (b) of the Transparency Law).</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrowed shares)? YES.</p> <p>Borrowed shares must be disclosed if the holder is entitled to exercise the voting rights attached to them at its discretion (Article 9 of the Transparency Law).</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. Acquisition of beneficial ownership? YES.</p> <p>The Transparency Law does not refer to the concept of ‘beneficial ownership’. It, however, refers to various other criteria to ensure that notification is required when ownership is either direct or indirect or if certain arrangements allow for the relevant shareholder to exercise the voting rights attached to the shares in question.</p> <p>In the definition of ‘shareholder’ direct or indirect ownership is notably covered:</p> <p>“shareholder” means any natural person or legal entity governed by private or public law, who holds, directly or indirectly: (a) shares of the issuer in its own name and on its own account; (b) shares of the issuer in its own name, but on behalf of another natural person or legal entity; (c) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts.’</p> <p>Article 9 of the Transparency Law further covers the aforementioned circumstances pursuant to which the relevant shareholder is entitled to acquire, to dispose of, or to exercise voting rights by enumerating the various contractual arrangements that would require notification. It further enumerates the following in this respect:</p> <ol style="list-style-type: none"> 1. voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question; 2. voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question; 3. voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them; 4. voting rights attaching to shares in which that person or entity has the life interest;
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		<p>5. voting rights which are held, or may be exercised within the meaning of points (a) to (d), by an undertaking controlled by that person or entity;</p> <p>6. voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;</p> <p>7. voting rights held by a third party in its own name on behalf of that person or entity;</p> <p>8. voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.</p> <p>b. Acting in concert or forming a group in relation to the securities in question? YES.</p> <p>‘Acting in concert’ is not a defined term under the Transparency Law but is defined in Article 5 (1) of the Luxembourg law of 19 May 2006 on takeover bids, as amended, (the ‘Takeover Law’)⁴¹. Persons ‘act in concert’:</p> <ul style="list-style-type: none"> • if they collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring control over the target company, frustrating the success of a takeover bid or maintaining control over the target company; • if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy vis-à-vis the target company. <p>Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.</p> <p>Further, voting arrangements between certain parties in relation to the exercise of the voting rights of shares of an Issuer are nonetheless covered in the contractual arrangements enumerated in Article 9 of the Transparency Law (referred to under response a above).</p>
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⁴¹ Law of 19 May 2006 (consolidated version) transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

		<p>c. Securities lending, short positions etc? YES.</p> <p>Article 12 of the Transparency Law states that notification requirements also apply to ‘a natural person or legal entity who holds, directly or indirectly: (a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market; (b) financial instruments which are not included in point (a) but which are referenced to shares referred to in that point and with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement’.</p> <p>The following types of financial instruments are listed in the law as being prima facie in scope (to the extent they met the conditions of the previous paragraph): ‘(a) transferable securities; (b) options; (c) futures; (d) swaps; (e) forward rate agreements; (f) contracts for differences; and (g) any other contracts or agreements with similar economic effects which may be settled physically or in cash’.</p> <p>d. Sale? YES.</p> <p>The sale of shares or voting rights that results in the crossing of a disclosure threshold (either upwards or downwards) triggers a notification obligation under Article 8 of the Transparency Law.</p> <p>e. Mere passive reach of threshold (such as a stock buyback)? YES.</p> <p>A passive crossing of a threshold (for example, as a result of a stock buyback by the issuer) also triggers a disclosure obligation for the shareholder, pursuant to Article 8 (2) of the Transparency Law.</p> <p>f. Other?</p> <p>Other events that may trigger disclosure include the acquisition or disposal of financial instruments that give the right to acquire shares with voting rights, as well as changes in the breakdown of voting rights due to events changing the total number of voting rights as described above.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Please refer to our response to Question 4 a.</p>
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. What constitutes acting in concert/forming a group?</p> <p>Under Luxembourg law, Article 2 (d) of the Takeover Law,⁴² as amended, refers to 'persons acting in concert' as 'natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid'. The concept is interpreted broadly and encompasses any coordinated action aimed at influencing the management or control of a company.</p> <p>This definition is, however, used in the context of another legislative framework that is, the Takeover Law. When assessing whether notifications of thresholds need to be made pursuant to the Transparency Law, it would need to be analysed whether one of the circumstances of Article 9 are met (please refer to our response to Question 4).</p> <p>b. Is a formal agreement or arrangement required, or is parallel action sufficient?</p> <p>Please refer to the above response (ie, 6 a).</p>

⁴² Law of 19 May 2006 (consolidated version) transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. Percentage of equity owned? YES.</p> <p>Disclosure of the percentage of voting rights or share capital held is required under Article 8 of the Transparency Law (please refer to our response to Question 1 above).</p> <p>b. Number and type of instrument? YES.</p> <p>In principle there is no requirement to disclose the number and type on instrument.</p> <p>However, pursuant to Article 12 (1) of the Transparency Law, where a natural person or legal entity holds directly or indirectly, financial instruments described in points (a) and (b) (please refer to our responses to Questions 3 c. and 4 c above) the required notification must provide a breakdown by type of financial instrument held under each point, distinguishing between those conferring a right to a physical settlement and those conferring a right to a cash settlement.</p> <p>Additionally, in accordance with Article 12a of the Transparency Law, where a natural person or legal entity holds, directly or indirectly, a certain number of voting rights as described in Articles 8 and 9, as well as a certain number of voting rights relating to financial instruments as described in Article 12, and the aggregate number of voting rights reaches, exceeds or falls below the thresholds set out in Article 8 (1) (please refer to our response to Question 1), the notification must include a breakdown of the number of voting rights attached to shares held in accordance with Articles 8 and 9 and the voting rights relating to financial instruments within the meaning of Article 12.</p> <p>c. Source of funds? NO.</p> <p>There is no requirement under Luxembourg law to disclose the source of funds used for the acquisition.</p> <p>d. Details on acquisitions (such as date and price)? YES.</p> <p>The date on which the relevant threshold was reached or crossed (Please refer to Question 2).</p>
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		<p>e. Purpose/declaration of intent? YES.</p> <p>Please refer to our response to Question 2.</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer? YES.</p> <p>Please refer to our response to Question 4.</p> <p>g. Filing of agreements and arrangements described in (f) above? YES.</p> <p>Please refer to our response to Question 2.</p> <p>h. Concert parties (members of group)? YES.</p> <p>The holdings of parties acting in concert must be aggregated and disclosed (please refer to our responses to Questions 4 and 6).</p>
8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. Direct/legal owner: YES.</p> <p>Under Article 8 of the Transparency Law, direct or legal owners of shares in an Issuer (please refer to our response to Question 4 a).</p> <p>b. Beneficial owner: YES.</p> <p>Please refer to our response to Question 4 a.</p> <p>c. Parties acting in concert: YES.</p> <p>Persons acting in concert are required to aggregate their holdings for the purpose of disclosure under Article 9 of the Transparency Law (please refer to our response to Question 4 c).</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. Must money/asset managers disclose their positions? YES.</p> <p>In accordance with Luxembourg law, management companies on behalf of their portfolios and undertakings for collective investments (UCI) are required to disclose the major holdings in Issuers pursuant to the Transparency Law. The CSSF has clarified in a Q&A document that:</p> <p style="padding-left: 40px;">‘(...) Like any other shareholder, a UCI, whether from Luxembourg or abroad, is required to notify its major holdings in such issuers. In each case, an analysis should be made to establish who has the right to exercise the voting rights attached to the shares in the portfolio of one or more UCIs or of one or more sub-funds of a UCI. Therefore, a management company that can exercise the voting rights attached to the shares which make up the portfolios it manages, is obliged to aggregate these voting rights, irrespective of whether the portfolios are in different sub-funds of one single UCI or in different UCIs. However, where voting rights (or the exercise thereof) are contractually transferred to one or more natural or legal persons (such as, for instance, a portfolio manager), the management company in question is exempt from having to aggregate such voting rights (...)’</p> <p>b. Must passive investors disclose their positions? YES.</p> <p>Passive investors are not granted exceptions or the ability to use a short form of disclosure under Luxembourg law. All investors acquiring or holding significant positions in Issuers are subject to the same disclosure requirements, regardless of whether their investment is passive or active.</p> <p>c. Other exceptions/short form of disclosure?</p> <p>The notification requirements described in Articles 8 and 9(c) of the Transparency Law are not applicable to shares provided to or by members of the European System of Central Banks (ESCB) in carrying out their functions as monetary authorities (including shares under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system), as provided in Article 10 of the Transparency Law. Such exemption applies to transactions lasting for a short period and provided that the voting rights attaching to such shares are not exercised.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. Any trigger for revision of the disclosure statement? YES.</p> <p>Under Luxembourg law, the obligation to revise a disclosure statement is triggered by certain events as set out in the Transparency Law. Specifically, a revision is required when there is a change in the proportion of voting rights or shareholding held by a person, or when there is a change in the intent or purpose regarding the holding (please refer to Question 1).</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>Under Article 8 of the Transparency Law, a revision is triggered when the proportion of voting rights held reaches, exceeds or falls below the thresholds of five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 33.333 per cent, 50 per cent and 66.667 per cent of the total voting rights in the company. Any acquisition or disposal crossing these thresholds requires a revised disclosure statement.</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>A change in the intent or purpose (such as a decision to acquire further shares, seek control, or propose changes to the board or articles) may need to be disclosed, even if no additional shares are acquired. The Transparency Law imposes the disclosure of inside information under Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ('MAR'). Such information must be of precise nature, which has not been made public and which, if it were made public, would be likely to have a significant effect on the prices on the financial instruments of the relevant issuer (Article 7.1 of MAR). Intermediate steps in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information (Article 7.3 of MAR).^{43 44}</p>
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43 The decision of the Court of Justice of the European Union of 28 June 2012 (C-19/11 (*Markus Geltl v Daimler AG*)) confirms that if there is a realistic prospect that an event will occur, intermediate steps can already be inside information requiring disclosure.

44 It is to be noted that, pursuant to Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending, among others, MAR, to make public capital markets in the EU more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (the 'Listing Act'), intermediate steps will no longer trigger disclosure, only the final event or decision in a process will require disclosure. The effective date of the relevant amending provision of the Listing Act will be 5 June 2026.

		<p>information under the MAR. Such information must be of precise nature, which has not been made public and which, if it were made public, would be likely to have a significant effect on the prices on the financial instruments of the relevant issuer (Article 7.1 of MAR). Intermediate steps in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information (Article 7.3 of MAR).^{45 46}</p> <p>d. Any other triggers for a revision requirement?</p> <p>Other triggers include the conclusion or termination of agreements relating to the exercise of voting rights (such as shareholders' agreements or concerted actions), or changes in the nature of the holding (eg, from direct to indirect holding). Also, the acquisition or disposal of financial instruments that result in an entitlement to acquire shares may trigger a disclosure.</p> <p>e. How soon must the revision be filed?</p> <p>The revised disclosure must be filed promptly and at the latest within four trading days following the date on which the shareholder learns of the acquisition or disposal, or on which the shareholder should have learned of it (Article 11 of the Transparency Law).</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p> <p>There is no statutory moratorium under Luxembourg law preventing further acquisitions pending disclosure. However, failure to comply with disclosure obligations may result in suspension of voting rights and administrative sanctions by the CSSF.</p>
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45 See n 43 above.

46 See n 44 above.

<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. Criminal fines: YES.</p> <p>Article 26 of the Transparency Law provides for criminal sanctions in the event of intentional infringement of certain obligations under the Transparency Law, including stake disclosure requirements. Penalties may include imprisonment and/or a fine: 'The persons who knowingly fail to disclose or to make available to the OAM such information in accordance with this law or who knowingly submit to the CSSF, or make available to the OAM or disclose inaccurate or incomplete information shall incur a fine of between €250 and €125,000'. However, these criminal sanctions apply only to intentional breaches as specified in this article.</p> <p>b. Regulatory sanctions: YES.</p> <p>The CSSF may impose administrative fines and other regulatory measures for failure to comply with stake disclosure obligations under Article 25 of the Transparency Law. Sanctions may include public warnings, suspension of voting rights and administrative fines up to €125,000 per infringement.</p> <p>c. Damages? YES.</p> <p>Although there is no specific provision contained in the Transparency Law, damages may be due under general civil law.</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)? YES.</p> <p>Under Article 28 of the Transparency Law (Suspension of voting rights relating to shares in companies incorporated in Luxembourg), voting rights attached to shares exceeding the relevant threshold may be suspended until proper disclosure is made. The CSSF may also order the suspension of voting rights or require divestment in case of persistent non-compliance.</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules? NO.</p> <p>Under Luxembourg law, the enforcement of stake disclosure requirements is primarily the responsibility of the CSSF.</p>
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12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. Has your jurisdiction an MTO requirement? YES.</p> <p>Luxembourg law requires a mandatory takeover offer (MTO) under certain circumstances, as set out in the Articles 5 and 6 of the Takeover Law.</p> <p>b. Level/threshold? YES.</p> <p>An MTO is triggered when a person, as a result of their own acquisition or the acquisition by persons acting in concert with them, holds securities of a company which, added to any existing holdings, directly or indirectly give them control of the company. 'Control' is defined as holding 33,33 per cent or more of the voting rights in the target company (Article 5 (1) and (3) of the Takeover Law).</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>The obligation to launch an MTO is triggered by the acquisition of shares or other transferable securities that carry voting rights in the target company admitted to trading on a regulated market in Luxembourg (Articles 1 (1) and 5 of the Takeover Law).</p> <p>d. What transactions/events/activities trigger MTO?</p> <p>An MTO is triggered by the acquisition of control (ie, 33.33 per cent or more of voting rights), whether by a single acquisition or by aggregation of holdings, including acting in concert with others. This includes direct or indirect acquisitions and also applies to situations where persons form a group or act in concert to acquire control (Article 5 of the Takeover Law).</p> <p>e. Are exceptions, opting-outs/opting-ups available? YES.</p>

12.		<p>The CSSF may grant exemptions in certain cases, such as intra-group transfers, inheritance, or acquisitions not aimed at changing control. Opting-up is also possible, allowing the threshold to be increased to 50 per cent with CSSF approval, subject to certain conditions (Article 5 (2) and Article 4 of the Takeover Law).</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p> <p>Failure to launch or complete an MTO as required may result disciplinary fines imposed by the CSSF on the parties to the bid. The law also provides for criminal sanctions in certain cases (Article 17 of the Takeover Law).</p>
13.	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>Under Luxembourg law, MTOs are governed by the Takeover Law. The law applies to companies whose shares are admitted to trading on a regulated market in Luxembourg.</p> <p>a. Restrictions on formal bid pricing: YES.</p> <p>The Takeover Law imposes rules on the pricing of mandatory bids. The offer price must be at least equal to the highest price paid by the offeror (or persons acting in concert) for the same securities during a period of 12 months preceding the bid. There are no explicit pre-bid or post-bid integration rules, but the CSSF may adjust the price to ensure equal treatment of shareholders (Article 5 (4) of the Takeover Law).</p> <p>b. Can MTO be subject to conditions? YES.</p> <p>An MTO may be subject to conditions, but only to the extent permitted by law. Permissible conditions are limited and typically relate to regulatory approvals or a minimum acceptance threshold. Conditions that are purely discretionary or that undermine the principle of equal treatment of shareholders are not allowed (Article 6 (3) of the Takeover Law).</p>

		<p>c. Consideration to shareholders: only in cash? NO.</p> <p>The offeror may offer consideration in cash, securities or a combination of both. However, cash must be offered as an alternative if the securities offered are not liquid or are not admitted to trading on a regulated market (Article 5 (5) of the Takeover Law).</p> <p>d. Other features: The CSSF is the competent authority supervising MTOs in Luxembourg. The Takeover Law also contains provisions on the obligation to disclose the decision to launch a bid, the content of the offer document and the rights of minority shareholders. Squeeze-out and sell-out rights are available under certain conditions (Articles 15–16 of the Takeover Law).</p>
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	<p>NO. Luxembourg law does not provide for a statutory 'put up or shut up' mechanism to force a person to make an announcement regarding whether or not it intends to carry out a public takeover bid. However, under the general supervisory powers of the CSSF and transparency laws, the CSSF could require that the potential bidder disclose its intentions. Depending on the circumstances, MAR may also require a clarification of bidders' intentions.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Mexico

	Which jurisdiction are you covering?	Mexico
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Pursuant to the Mexican Securities Market Law (Ley del Mercado de Valores or LMV), any person or group that acquires directly or indirectly a stake reaching ten per cent or more of the outstanding ordinary voting shares of a listed company (but less than 30 per cent) must disclose it to the public by means of the corresponding stock exchange. This initial threshold (ten per cent) triggers an immediate disclosure obligation.</p> <p>Furthermore, insiders and major shareholders ('related individuals' to the issuer, such as directors, officers, or significant shareholders) must disclose any increase or decrease in their shareholding by five per cent of the capital.⁴⁷</p> <p>Aside from these cases, there is no requirement to disclose stakes below ten per cent (once an investor reaches 30 per cent, that threshold invokes the mandatory tender offer rules, discussed further below, rather than a mere stake disclosure.)</p> <p>Notably, a shareholder falling <i>below</i> ten per cent is not explicitly required by law to disclose, unless it results from a transaction that itself meets the five per cent criteria for insiders. In summary, ten per cent is the principal trigger for public stake disclosure in Mexico (with additional five per cent change disclosures for certain insiders), and these percentages are calculated as a percentage of the company's total outstanding voting equity.</p>

⁴⁷ An *insider* or *related person* is someone who has special access to confidential information about a company, or who has a close relationship with the company, such as a director, officer, controlling shareholder or family member. They must follow special rules when trading or disclosing information.

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>Timing: The LMV requires that the disclosure is made promptly – no later than the next business day after the threshold is crossed. In practice, this means by the end of the following trading day. This tight deadline applies to both the initial ten per cent disclosure and the five per cent change disclosures by insiders.</p> <p>Form and method: The disclosure must be made as a notice to the market through the applicable stock exchange on which the company’s shares are listed. Additionally, the acquirer must notify the National Banking and Securities Commission (Comision Nacional Bancaria y de Valores or CNBV) in writing.</p> <p>In summary, the stake disclosure is made public via a stock exchange announcement (accessible to investors) and is concurrently reported to the CNBV for regulatory compliance.</p>
<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>A. YES</p> <p>B. YES</p> <p>C. YES (if it is more than five per cent of the capital stock value).</p> <p>D. YES (relevant operations if such operation is equal or more than five per cent of the capital stock).</p> <p>E. YES (if it represents more than five per cent of the capital stock value).</p> <p>F. Any operation that affects the company’s shares or which amount represents more than ten per cent of the value of the capital stock.</p>

<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES. Acquiring shares is the core trigger for disclosure. Any direct or indirect acquisition of shares that results in crossing the ten per cent ownership threshold (or five per cent in the case of insiders).</p> <p>b. YES. Holding of a group of persons acting in concert are aggregated. If persons form a group that collectively reaches or exceeds ten per cent of voting shares, this triggers disclosure just as it would for a single acquirer. The LMV explicitly includes a '<i>persona o grupo de personas</i> (individual or group of individuals)', in such cases, the group must disclose as a whole (via a common representative) and also report each group member's individual share of the holdings.</p> <p>c. These do not explicitly trigger stake disclosure under Mexican law. Simply lending out shares or taking a short position is not considered an 'acquisition' or 'disposition'. The only time such transactions might come into play is if they ultimately result in a permanent change of ownership.</p> <p>d. YES, in certain cases. A significant sale can trigger a disclosure if it falls under the statutory scenarios. Under the LMV, an insider or related person's decrease of their stake by five per cent or more must be disclosed within one business day.</p> <p>e. Under Mexican law there is no specific provision regarding this, it only establishes the triggering conditions regarding 'acquiring' or 'shares'.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Mexican financial laws does not use the term 'beneficial owner' in the same technical manner as other jurisdictions, but it captures the concept through direct or indirect ownership and group action.</p> <p>In essence, disclosure is triggered by having an economic ownership interest in the shares meeting the threshold. This includes shares held indirectly through controlled entities or trusts – acquiring through a vehicle is treated the same as acquiring personally. The LMV's language '<i>directa o indirectamente</i>' (directly or indirectly) ensures that beneficial holdings (not just registered title) count towards the thresholds. For example, if Person A controls Company B and Company B buys ten per cent of a listed company, Person A is deemed part of the 'group' that acquired the stake and disclosure is required.</p>
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>Acting in concert is defined under Mexican law as '<i>Grupo de Personas</i>' (Group of Persons) and is defined broadly under Mexican law. It refers to persons who have any kind of agreement – formal or informal – to coordinate their decisions regarding the securities of an issuer. Specifically, the LMV provides that a 'group of persons' exists when persons agree to vote or make decisions in the same manner (<i>en un mismo sentido</i>) with respect to a company.</p> <p>The agreement can be of any nature; it need not be a written contract. Even a tacit or oral understanding can qualify, so long as the parties are acting together towards a common goal (jointly acquiring shares or voting as a bloc).</p> <p>The law also establishes rebuttable presumptions that certain persons are acting in concert: for example, individuals related by blood, affinity or civil ties up to the fourth degree, including spouses, and persons in a common-law marriage or partnership; companies under common control; or a controlling shareholder and its affiliates are presumed to constitute a group.</p>

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. The disclosure must state the percentage of voting shares acquired, as required under Mexican law.</p> <p>b. Same as above.</p> <p>c. There is no explicit legal requirement under Mexican law to disclose the source of funds for the acquisition.</p> <p>d. NO, under Mexican law the stake-building disclosure does not demand a history of transactions or prices paid. One simply reports the position reached. Individual trade dates and prices are not part of the public disclosure.</p> <p>e. YES, if a person intends to acquire control or influence over the issuer (30 per cent or more), they must disclose their intent and make an offer for the totality of the shares.</p> <p>f. If there are shareholders' agreements, voting arrangements, or similar instruments affecting control, they must be disclosed (public offer and not a private agreement).</p> <p>g. Such agreements must be filed with the CNBV and disclosed to the public via the via the Electronic System for the Submission and Dissemination of Information (Sistema Electrónico de Envío y Difusión de Información) of the CNBV.</p> <p>h. Any coordinated action between parties must be disclosed as acting in concert is considered a triggering event.</p> <p>i. YES, disclosure must also include any information that may affect the decision-making of investors, especially when public offers are made.</p>
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<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES. The obligation to disclose is imposed on the person or group of persons who acquire the stake.</p> <p>b. YES. If the shares are acquired indirectly (for example, through a controlled subsidiary, through a trust, or by a person acting as legal representative), the ultimate beneficial acquirer is responsible for disclosure as the law covers acquisitions made 'directly or indirectly'.</p> <p>c. YES. When shares are acquired by a group acting in concert, the entire group has the obligation to disclose collectively.</p> <p>d. There are no other categories of persons who must disclose beyond those who own or control the shares.</p>
<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. If a money manager (such as an investment fund or institutional asset manager) acquires a significant position (more than ten per cent), they are subject to the same disclosure rules.</p> <p>b. Similarly, there is no exemption for 'passive' investors. An investor who claims to have no intention of influencing the company still must disclose at ten per cent like anyone else.</p> <p>c. Mexican law provides that offerings of unregistered securities may be made without triggering registration or related disclosure duties, provided that one of the following conditions is met: (1) the offer is made exclusively to institutional⁴⁸ or qualified investors;⁴⁹ (2) the securities are offered to fewer than 100 persons; (3) the offer is part of a general employee stock plan and; (4) the offer is to shareholders or partners of companies operating exclusively or primarily with them.</p>

48 An institutional investor (*inversionista institucional*) is any entity recognised as such under applicable Mexican regulations, including financial institutions and entities acting as trustees under investment trusts (*fideicomisos*) that meet the institutional criteria.

49 A qualified investor (*inversionista calificado*) is defined as an individual or entity with sufficient financial capacity and experience to evaluate investment risks without the need for regulatory protections. Under current regulation (General Provisions applicable to securities offerings), there are generally three levels of investor eligibility:
 Basic qualified investor: Individuals with investments of at least MXN \$12.75m (USD \$675,000), or annual income of at least MXN \$4.25m (USD \$225,000) in each of the last two years.
 Sophisticated investor: Individuals with investments of at least MXN \$25.5m (USD \$1.35m), or annual income of at least MXN \$8.5m (USD \$450,000) in each of the last two years, who also sign an acknowledgment of risks.
 Restricted offering threshold: Applicable to individuals or entities with average investments of at least MXN \$170m (USD \$9m) over the past year.

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>Mexican law does not require a continuous update or 'amendment' of the stake disclosure unless a new triggering event occurs. Once the disclosure is made (at ten per cent), there is not a requirement to file an updated statement simply due to time passing or a change of plans.</p> <p>a. There is no periodic or standalone 'update' requirement for a previously filed stake notice. The initial disclosure needs only to be updated if the person's holdings change in a way that hits another reporting threshold.</p> <p>b. If the stakeholder increases their ownership further, the obligation depends on the threshold. Minor increases (below an additional ten per cent) do not trigger a new public report for a non-insider; they simply remain noted in the next annual report of top shareholders. In the case of insiders a below an additional five per cent do not trigger a new public report.</p> <p>c. There is no explicit rule requiring an investor to update the market if their intention.</p> <p>d. NO.</p> <p>e. In the event that a new disclosure-worthy event does occur (like a further five per cent change by an insider or an investor hits 30 per cent requiring an offer), the same timing rule (next business day).</p> <p>f. There is no provision under Mexican Law regarding moratorium on further acquisitions.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO. A violation of the stake disclosure requirements (eg, not reporting a ten per cent acquisition on time) is not a criminal offense by itself. It does not carry jail time or criminal charges. Criminal penalties in the LMV are reserved for serious offenses like insider trading, market manipulation or fraud. Simply failing to make a timely disclosure is dealt with via fines, not imprisonment.</p> <p>b. The CNBV may impose monetary fines for non-compliance. The law specifies fine ranges for these infractions. In particular, failure to disclose a ten per cent stake is subject to a fine of 20,000 to 100,000 days of general minimum wage.</p> <p>Likewise, insiders who omit reporting a five per cent change, or ten per cent or more, holders/insiders who fail to report their trades, face fines in the order of 10,000 to 100,000 days' wage.</p> <p>c. Mexican law does not expressly grant a private right to damages for other shareholders or the issuer just because someone failed to file a stake disclosure.</p> <p>d. Same as above.</p> <p>e. Enforcement is primarily made by the CNBV. There is no private right of action for other shareholders to directly enforce the stake disclosure provisions. Only the CNBV (or possibly the stock exchange as a self-regulatory matter) can sanction the violator.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES, Mexican law imposes a mandatory tender offer (<i>oferta pública de adquisición forzosa</i>) (MTO) requirement upon crossing a certain control threshold. This is governed by the LMV.</p> <p>b. The trigger for an MTO is acquiring '30 per cent or more' of a listed company's ordinary voting shares.</p> <p>c. The calculation of the 30 per cent includes not just shares already owned but also any instrument that gives a right to acquire shares. Convertible bonds, any equity-linked debt, options or equity swaps that are settled in shares are all counted as if the underlying shares were held.</p> <p>d. Any acquisition of beneficial ownership that results equal or more of the 30 per cent ownership will trigger the obligation. This includes a single transaction or a series of transactions (simultaneous or successive) that take the acquirer from below 30 per cent to 30 per cent or more. A group of persons acting together is treated as one unit. If a group of persons collectively intends to acquire or reach 30 per cent of the voting shares, the MTO obligation applies to the group.</p> <p>e. Mexico's mandatory offer rule is fairly strict, and the law itself does not enumerate general exemptions or opt-out provisions. However, if a controlling shareholder already exists above 30 per cent (for example: at IPO the founder holds 60 per cent), that situation is grandfathered and no MTO is needed because there is no acquisition (the rule only triggers upon an acquisition that crosses 30 per cent). Likewise, the CNBV can permit a lower offer (eg, less than 100 per cent) in special cases, considering the interests of shareholders (especially minorities), if the company's board (with a fairness committee's opinion) approves the plan.</p> <p>f. Loss of voting rights and nullification of corporate acts: If someone acquires control in breach of such 30 per cent disposition (ie, they pass 30 per cent without a proper offer), they cannot exercise the corporate rights (especially voting rights) for the shares acquired in violation.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. Equal pricing and treatment: All shareholders must be offered the same price and conditions. The bid must extend to all series/classes of shares of the target company, including non-voting or limited-voting shares, at equivalent terms. There can be no discrimination or selective premiums.</p> <p>Pre-bid purchasing restrictions: Once a bidder has decided to launch an MTO (or in the case of a voluntary offer, once they have announced it), they cannot purchase target shares outside of the formal offer process.</p> <p>Minimum offer period: The offer must remain open for a minimum of 20 business days. This is to give shareholders ample time to consider the bid, compare alternatives, and tender their shares.</p> <p>b. YES, certain conditions are allowed. An MTO can include conditions such as a minimum acceptance level. Mexican law explicitly acknowledges that the offer can state a minimum number of shares that must be tendered for the offer to go through. If that minimum is not met, the bidder can refuse to consummate the offer, likewise it can include such a maximum acceptance level.</p> <p>Other common conditions include regulatory approvals (eg, the offer is subject to obtaining antitrust clearance or sectoral regulator consent) and absence of material adverse changes in the target's business. Mexican practice allows such conditions as long as they are clearly stated in the offer prospectus.</p> <p>c. The consideration in an MTO is not required to be cash-only. The bidder may offer cash, securities or a combination. There is no statutory restriction that it must be cash; the key is equal treatment and adequate disclosure. In some cases, bidders have offered shares of the bidder or another entity as consideration.</p> <p>d. Full vs partial offer: If the bidder's goal is control (more than 50 per cent), they are required to make an offer for 100 per cent of the company's shares. If the bidder does not seek control (say they want to go from zero to 35 per cent and stop there), they must make an offer for either that proportion of shares or ten per cent of the capital, whichever is greater.</p>
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14.	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>In addition to the MTO rules described above, Mexican law does not provide for a 'put up or shut up' mechanism similar to that found in other jurisdictions. There is no legal requirement for a potential acquirer to either launch a formal bid or withdraw their interest within a specific timeframe solely based on their expression of interest.</p> <p>While certain tender offers may become mandatory under Mexican law (eg, upon acquiring control of a public company), the LMV does not impose a deadline to formalise or withdraw a preliminary or non-binding approach. Therefore, the concept of a 'put up or shut up' rule does not exist as such under the Mexican legal framework.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for New Zealand

	Which jurisdiction are you covering?	New Zealand
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Disclosures of interests in financial products (securities) in New Zealand are regulated by the Financial Markets Conduct Act 2013 (the 'FMCA') and the attendant Financial Markets Conduct Regulations 2014.</p> <p>Under the FMCA, a substantial product holder must make certain public disclosures relating to a substantial holding. A 'substantial product holder' is a person with a substantial holding. A 'substantial holding' is a relevant interest in quoted voting products (ie, generally shares or other securities carrying votes in an entity listed on New Zealand's main securities exchange, the NZX) that comprise five per cent or more of a class of voting products in the listed issuer.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure</p> <p>Once a person's interest reaches the five per cent threshold, that person must make disclosure in the prescribed form as soon as the person knows, or ought reasonably to know, that the person has the substantial holding per section 276(2) of the FMCA. This requirement also applies separately to a person's substantial holding of another class of shares in the same issuer.</p> <p>b. Form of disclosure</p> <p>The prescribed form of disclosure is by publication on the NZX's Market Announcement Platform. The Financial Market Conduct Regulations 2014 under FMCA prescribe the forms disclosure, which are also available on the NZX website, as linked below in the section headed 'Substantial Product Holder disclosures & Directors and Senior Managers disclosures': NZX MAP Forms</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES. If YES: must such instruments be exercisable/ convertible within a time period? NO.</p> <p>d. YES</p> <p>e. YES</p> <p>Other rights over the shares carrying voting rights are likely relevant – for example, the right to acquire the share, or a voting agreement – in each case that give rise to a relevant interest of five per cent or more when taking into account other relevant interests held.</p> <p>The FMCA requires disclosure where a person has a substantial holding of a relevant interest in a quoted voting product.</p> <p>A person has a ‘relevant interest’ in a voting product if the person:</p> <ol style="list-style-type: none"> 1. is a registered holder of the product; 2. is a beneficial owner of the product; 3. has the power to exercise, or to control the exercise of, a right to vote attached to the product; or 4. has the power to acquire or dispose of, or to control the acquisition or disposal of, the product, per section 235(1) of the FMCA. <p>a. Voting shares?</p> <p>A person’s obligations to disclose a relevant interest only arise in respect of existing shares and derivative instruments which provide the right to acquire existing shares. Any options to acquire shares which do not exist are not captured by the obligations (eg, a warrant for the issuance of a share). However, separate Listing Rules are likely to lead to a disclosure obligation for the issuer in respect of warrants.</p> <p>See Question 4 regarding events that trigger disclosure.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. NO</p> <p>Passive activity – for example, exceeding five per cent through a share buyback that the shareholder does not participate in does not give rise to any disclosure obligation, but the obligation would be triggered on subsequent active trading activity.</p> <p>The following events will trigger the disclosure obligations under the FMCA:</p> <ol style="list-style-type: none"> 1. where a person begins to have a substantial holding (ie, their relevant interest in voting products reaches five per cent or more) (section 276); 2. where a person’s substantial holding experiences a subsequent movement of one per cent or more (section 277); 3. where the nature of the person’s relevant interest changes (section 278); and 4. where the person ceases to have the substantial holding (section 279). <p>a. Acquisition of a beneficial ownership</p> <p>A substantial holding is a relevant interest in a voting product and includes beneficial ownership, as discussed in Question 3.</p> <p>b. Acting in concert or forming a group in relation to the securities in question</p> <p>Acting in concert or forming a group in relation to securities may trigger the disclosure obligation through the parties being deemed to have a relevant interest in the others’ share. This is a factual analysis. See the discussion of this in Question 6.</p>
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5.	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>For the most part it is assumed that the economic interest will amount to a derivative, which informs our answer to d. All of a, b and c. See the answer relating to relevant interests in financial products which can trigger disclosure, found in Question 3.</p> <p>The FMCA does not contain a statutory definition of 'beneficial ownership'. Courts have adopted the plain English reading of beneficial ownership.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. What constitutes acting in concert/forming a group?</p> <p>As discussed in Question 4, whether holders of voting securities are acting in concert or as a group will always be a factual inquiry.</p> <p>Indicia of shareholders acting in concert or forming a group was considered in the recent New Zealand Takeovers Panel Determination of NZME Limited (published 7 May 2025) in relation to a proposed board spill of NZME Limited. It should be noted that these indicia were considered in relation to the Takeovers Code, a separate regime to the FMCA.</p> <p>The Panel considered that key indicia of acting in concert were:</p> <ul style="list-style-type: none"> • an agreement/arrangement between shareholders in connection with how they will exercise their voting rights, which must be more than one-way/unilateral; • active collaboration/engagement in preparing and commenting on key documents; • jointly signing a requisition for a shareholder meeting; • one shareholder stipulating key prerequisites for their support in relation to the securities; and • shareholders having shared or joint plans for the management of the company following the actions contemplated by the shareholders. This can include selection potential nominees for election as directors. <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p> <p>An arrangement does not have to be formally documented or binding for the participants to be found as acting in concert.</p>
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7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p> <p>f. YES</p> <p>g. YES</p> <p>h. YES</p> <p>g. Percentage of equity owned and b. Number and type of instrument</p> <p>As set out in the forms of disclosure in Question 2, a person who is disclosing a relevant interest that reaches or exceeds five per cent must fully detail its holding. This includes the percentage of equity owned, along with the number and type of instrument owned.</p> <p>h. Source of funds and e. Purpose/declaration of intent</p> <p>There is no need to provide details or proof of the source of the funds used for the transactions or elaborate on the purpose of the transaction.</p> <p>i. Details on the acquisitions</p> <p>The disclosure forms require details of the date and price of the transactions. It is also standard practice to provide a paragraph explaining a narrative of the details of the transactions and events giving rise to disclosure.</p> <p>j. Description and filing of relevant agreements and arrangements</p> <p>Regulation 139 of the Financial Markets Conduct Regulations 2014 states that relevant agreements must be attached to event disclosure forms (see Question 2) when the relevant interest arises from the agreement. Agreements must be attached either in full form or, if not in writing, in the form of a document which details the material terms of the relevant interests.</p>
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		<p>A relevant agreement does not need to be attached where:</p> <ul style="list-style-type: none"> • the relevant agreement has been attached in a previous event disclosure; • the substantial product holder has the relevant interest only because the holder is either a registered holder, a beneficial owner, or both, of the financial products; or • the person’s ordinary business consists of undertaking investment management contracts.
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>See Questions 3 and 4 above.</p> <p>A direct/legal owner can be exempt via the exemption for corporate trustees and nominee companies under section 285 of the FMCA.</p> <p>A person (A) does not need to comply with the provisions relating to disclosure in relation to a substantial holding in a listed issuer if A has that substantial holding merely because A acts for another person in the ordinary course of business as a corporate trustee or a nominee company, and A has opted into the exemption by written notice to the FMA.</p> <p>There are also exceptions when a person is required to make disclosure when a second person is also required to comply with, and does comply, with that disclosure in relation to the same listed issuer, when the obligation for the second person to disclose arises due to the second person having a significant shareholding in the first person (20 per cent or more).</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? If YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? If YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES</p> <p>b. YES</p> <p>Various exceptions are provided for under section 238, which details situations that do not give rise to relevant interests, thereby not giving rise to the requirement to disclose.</p> <p>A few notable exemptions from this section apply to relevant interests that arise for persons solely as a result of their:</p> <ul style="list-style-type: none"> • lending money in the ordinary course of business; • undertaking trading activities on behalf of other persons; • being appointed as proxies (on a revocable basis); or • acting as bare trustees of a trust to which the financial products are subject.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. One per cent.</p> <p>c. N/A – intent is not required to be disclosed.</p> <p>d. Change in the nature of holding and ceasing to be a substantial holder.</p> <p>e. Immediately.</p> <p>f. NO</p> <p>See Question 4 above.</p> <p>Where a person’s substantial holding experiences a movement of more than one per cent, changes in nature, or the person ceases to have the substantial holding, the person must issue a disclosure statement.</p> <p>This revised disclosure statement must be filed as soon as the person knows, or ought reasonably to know, that the person has the substantial holding.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>The FMA has a wide range of functions and powers to enforce and promote compliance with the FMCA. The FMA as a regulator is relatively active in its enforcement, having undertaken 12 enforcement activities in 2025 (as at 7 July 2025).</p> <p>a. Criminal sanctions?</p> <p>In the event that an investigation of a person’s affairs reveals criminal activity, the FMA can bring proceedings for criminal liability.</p> <p>b. Regulatory sanctions?</p> <p>Under section 468 of the FMCA, the FMA can make a ‘direction order’ where it is satisfied that a person has contravened, or is likely to contravene the FMCA, including the substantial product holder disclosure provisions. These orders can direct the person to comply with the relevant provision and can stipulate steps for the person’s compliance. This can then support civil remedies.</p> <p>Beyond direction orders, enforcement powers in the FMCA come in the form of court orders.</p> <p>c. Damages?</p> <p>Pecuniary penalties and compensatory orders can also be issued by the court. Under section 485 of the FMCA a court, on the application of the FMA, can make a declaration of contravention, which allows an aggrieved person to obtain compensatory damages or other civil liability without having to prove the contravention occurred.</p>
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		<p>e. Private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p> <p>As discussed in Question 4 c, any other person can apply for a declaration of contravention, which will allow the aggrieved person to obtain compensatory damages. See also the discussion in Question 4 d.</p>
12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? If NO: please specify.</p> <p>b. Level/threshold? If NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. NO</p> <p>b. YES, at 20 per cent.</p> <p>c. Becoming holder or controller of voting rights above the threshold.</p> <p>d. YES – holdings of associates are taken into account.</p> <p>e. YES</p> <p>f. VARIOUS</p> <p>a. New Zealand's MTO requirements</p> <p>There is no 'mandatory tender offer' under New Zealand law per se. However, there is a prohibition on becoming the holder or controller of voting rights in a Code Company (described below) above a 20 per cent threshold, without complying with the Takeovers Code (ie, under a takeover offer under the Takeovers Code, a court-approved scheme under the Companies Act 1993, or a transfer or issue approved by shareholders by ordinary resolution – or other specific exemptions). A Code Company for the purposes of the Takeovers Code is:</p> <ol style="list-style-type: none"> 1. a company incorporated in New Zealand that is listed on the NZX Main Board (or was within the previous 12 months); and 2. a company that has 50 or more shareholders and 50 or more share parcels and meets the financial threshold for being at least 'medium-sized'.

		<p>b. Level/threshold?</p> <p>The requisite triggering threshold is the ‘fundamental rule’ under the Takeovers Code, which requires compliance with the processes set out in the Takeovers Code if the transaction will lead to the bidder:</p> <ol style="list-style-type: none"> 1. holding or controlling more than 20 per cent of the voting rights in a Code Company; or 2. increasing an existing holding or control of 20 per cent or more of the voting rights in a Code Company. <p>We note that two shareholders can breach this threshold when their aggregated shareholdings exceed 20 per cent. Refer to the indicia of association described by the Takeovers Panel in Question 6.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>The ‘fundamental rule’ applies to becoming the holder or controller of any voting securities (eg, voting shares) in excess of the 20 per cent threshold by any means. This can include upstream transactions.</p> <p>d. What transactions/events/activities trigger MTO?</p> <p>Any activities involving becoming the holder or controller of voting rights over the 20 per cent threshold will need to comply with the Takeovers Code or an exemption.</p> <p>e. Are any exceptions available?</p> <p>The following key exceptions apply to the ‘fundamental rule’:</p> <ol style="list-style-type: none"> 1. Full offer: A bidder can make a full offer for all of the voting securities that they do not hold already, but it must include offers for all classes of equity securities (whether voting rights are attached or not). The consideration and terms offered for different classes of securities must be fair and reasonable as between the classes. 2. Partial offer: A partial offer for less than 100 per cent of the securities is permitted if:
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		<ul style="list-style-type: none"> (i) extended to all holders of voting securities; (ii) for a specific percentage of each holder's voting securities; (iii) if there is more than one class of voting securities, the partial offer is extended to each class; and (iv) if the bidder's existing holding is 50 per cent or less: <ul style="list-style-type: none"> a. the offer is for securities which will result in the bidder holding or controlling more than 50 per cent of the voting rights; or b. if written approval is obtained. <p>3. Shareholder approval: An acquisition is permitted (by transfer or issue) if it is approved by shareholders (excluding shareholders (and their associates) acquiring or disposing of the securities, who may not vote) by ordinary resolution.</p> <p>4. Five per cent creep: Acquisitions of up to five per cent over a 12-month period are permitted if the bidder already holds between 50 per cent and 90 per cent of the voting securities.</p> <p>5. Compulsory acquisition: If a person holds or controls 90 per cent of more of the voting rights, they can increase their holdings without restriction. For completeness, we note that if a person reaches the 90 per cent threshold, it may compulsorily acquire the outstanding shares, and the shareholders may require the person to purchase their shares.</p> <p>There are also specific class exemptions in relation to rights issues, share buybacks, underwriting, which can apply for a specific period – generally requiring the party going over 20 per cent or increasing their holding to reduce their holding back to their original percentage level within a prescribed timeframe.</p>
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		<p>f. Sanctions where the MTO is not launched/completed</p> <p>Breaches of the 'fundamental rule' may give rise to civil liability (and criminal liability, in some situations). Where a bidder does not comply with the Takeovers Code, it will not be automatically required to make a bid for all of the relevant company's voting securities.</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. NO</p> <p>b. YES</p> <p>c. NO</p> <p>a. Are there any restrictions on formal bid pricing?</p> <p>YES, in the context of a takeover offer itself. Although there is generally flexibility regarding deal terms and prices in New Zealand, a takeover offer will need to treat all shareholders equally (ie, all shareholders belonging to the same class of equity securities must be offered the same terms and consideration). The consideration offered also cannot be decreased after a takeover offer has been made. Under a takeover offer, any last and final statements the bidder makes regarding deal terms and price will be strictly enforced.</p> <p>There is no restriction on the price at which a pre-bid stake may be purchased at, and escalation clauses are permitted.</p> <p>Court-approved schemes of arrangement provide greater flexibility around terms and consideration offered. A scheme allows different consideration for each class of shares, but this may create interest classes for voting purposes. A scheme of arrangement must be approved by both: (1) 75 per cent or more of the votes cast in each interest class entitled to vote and voting; and (2) a majority of the votes of all shareholders entitled to vote (irrespective of whether they do in fact vote).</p>

		<p>b. Can MTO be subject to conditions?</p> <p>YES. However, certain conditions cannot be included, such as conditions in a takeover offer that depend on the judgement of the bidder. A bidder may not allow the offer to lapse in unreasonable reliance on a condition or in reliance on a condition that restricts the target's ordinary activities.</p> <p>c. Consideration to shareholders – cash only?</p> <p>NO, offers do not have to be made in cash only. Although cash is the preferred form of consideration, it is possible to offer other forms. If scrip is being offered, the bidder must ensure that the relevant offer complies with relevant securities laws in their home jurisdiction. New Zealand does not have a standing exemption from securities disclosure laws for a scrip or exchange offer, although specific exemptions have been obtained.</p>
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	There is no 'put up or shut up' mechanism in New Zealand. A bidder may let its notice of intention to make offer lapse and then follow up with a further notice of intention to make a takeover offer without being subject to a stand-down period of any kind.

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for the Netherlands

	Which jurisdiction are you covering?	The Netherlands
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>A shareholder who, directly or indirectly, acquires or disposes of a 'substantial holding' in the issued share capital (ie, the share capital including any treasury shares held by the company) and/or voting rights of:</p> <ul style="list-style-type: none"> • a Dutch public limited liability company with its shares listed on a regulated market in the EEA; or • a company incorporated under the laws of a non-EEA Member State with its shares listed on a regulated market in the Netherlands and the Netherlands as its home Member State for EU Transparency Directive (2004/109, as amended) purposes must file their new interest with the Dutch Authority for the Financial Markets (the 'AFM'). The AFM processes substantial holding filings in a register which is publicly available on the AFM website. The statutory thresholds triggering a filing are three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 40 per cent, 50 per cent, 60 per cent, 75 per cent and 95 per cent. The percentages are calculated by dividing the nominal value of the shares/the number of voting rights (the numerator) by the total issued (nominal) share capital of the issuer or the total number of voting rights attached to the issued share capital (the denominator). <p>A shareholder who, directly or indirectly, acquires or disposes of a 'substantial holding' in the issued share capital and/or voting rights of:</p> <ul style="list-style-type: none"> • a company incorporated under the laws of another EEA Member State than the Netherlands with its shares exclusively listed on a regulated market in the Netherlands; or

		<ul style="list-style-type: none"> • a company incorporated under the laws of a non-EEA Member State with its shares listed on a regulated market in the Netherlands, which has the Netherlands as its host Member State for EU Transparency Directive purposes; must also file their new interest with the AFM. The statutory thresholds triggering disclosure to the AFM are as follows: five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent. <p>Gross short positions must also be filed with the AFM in the event a threshold is reached or crossed. The applicable thresholds as referred to above are the same for gross short positions.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Filing with the AFM must be done:</p> <ol style="list-style-type: none"> 1. 'without delay' after the shareholder knows or should know that the percentage of shares and/or voting rights he holds reaches, exceeds or falls below a threshold. A person is supposed to know (ie, should know) ultimately two trading days after the acquisition or disposal of the shares, voting rights or a gross short position, that this is the case. In the context of the filing requirement, 'without delay' means that the time between the moment a person becomes or should have become aware of reaching or crossing a threshold, and the moment the AFM receives the filing, must be as short as possible given the circumstances. 2. In case of a passive reach (ie, the filing must be made because of a change in the denominator of the issuer based upon which the percentage must be recalculated): at the latest on the fourth day after the processing of a denominator change on the AFM website. <p>b. Filing must be done electronically via Loket AFM</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES, shares and votes must be filed if thresholds are reached or crossed.</p> <p>b. YES, shares must be filed if thresholders are reached or crossed.</p> <p>c. YES, the filing obligations relate to actual as well as potential interests in shares and/or voting rights. There is no link to an applicable time period for the exercise or conversion of derivative instruments.</p> <p>d. YES, cash-settled instruments fall within the scope of the filing obligations (see our answer to Question 5 h).</p> <p>e. YES. From a Dutch property law point of view, the borrower (in case of securities lending) or the purchaser (in case of a repurchase agreement) becomes the legal owner of the financial instruments. As a result, each of them must in principle file their new share and/or voting interest with the AFM if applicable thresholds are reached or crossed; this does not apply if the borrower/ purchaser lends on the shares before the end of the next trading day.</p> <p>f. Direct as well as indirect interests are attributed towards the same shareholder (see also our answers to Question 4). An example of an indirect interest is that a person is deemed to hold shares which are held by their controlled undertaking. Other rules may be relevant as well (see our answer to Question 5).</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES/NO (see the explanation in Question 5).</p> <p>b. YES</p> <p>c. YES. See our answer to Question 3 e with respect to securities lending and repurchase agreements, and to Question 1 with respect to the filing of gross short positions in shares and/or voting rights.</p> <p>d. YES</p> <p>e. YES. See our answer to Question 2 b with respect to the filing obligation of a shareholder in case of a passive reach. The AFM expects shareholders who hold a 'critical' percentage of share capital interest and/or voting rights in an issuer, to keep themselves informed of the consequences of the acts of the issuer with respect to the percentage of share capital interest and/or voting rights that are relevant to the filing obligation.</p> <p>After a share buyback by the issuer, the issuer will hold the shares instead of the prior shareholder. However, this will have no effect on the issued share capital. As the percentage of shares held by the other shareholders will thus remain the same, a share buyback will not result in the passive reach of a threshold for the other shareholders. In contrast, cancellation of shares would lower the issued share capital, which could result in a passive reach of a threshold.</p> <p>f. YES. The scope of transactions, events and activities is broad, and includes but is not limited to the ones mentioned under a–e. Essentially any transaction, event or activity as a result of which a shareholder, directly or indirectly, acquires or disposes of a 'substantial holding' in the issued share capital or voting rights of an issuer, triggers a filing requirement.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>There is no definition of beneficial ownership under Dutch law. However, Dutch law provides for detailed rules setting forth in which circumstances shares and/or voting rights are attributed to a person for purposes of the ‘substantial holding’ filings. All of a, b and c apply, but also other circumstances are relevant. See below for further details. In principle, a person is deemed to hold shares he possesses as well as the voting rights they can exercise as a shareholder.</p> <p>In addition:</p> <ol style="list-style-type: none"> 1. A person is deemed to hold the shares and/or voting rights which are held by their controlled undertaking. A controlled undertaking is defined as a subsidiary under Dutch law or an undertaking over which a person has the power to exercise predominant control. The controlled undertaking does not have a filing obligation itself. 2. A person is deemed to hold the voting rights they can cast as a pledgee or usufructuary, if applicable law provides for this and the relevant statutory provisions have been satisfied. 3. A person is deemed to hold the shares and/or voting rights that are held by a third party (eg, a bank) for their own account. 4. If an agreement has been concluded that obliges the parties to act in concert (see also our answer to Question 6), each individual party will be considered to hold the voting rights the other party holds. 5. A person is considered to hold the voting rights held by a third party under an agreement concluded with that person that provides for a temporary and paid transfer of the voting rights in question.
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		<p>6. The manager (and not the depositary) of an investment fund is considered to have disposal of the shares in the fund, and the voting rights attached thereto, as it is the manager who will cast the voting rights attached to the shares in the fund and decide on the sale and purchase of the shares. A parent company of the manager of an investment fund or a parent company of a portfolio manager may be exempt from the filing obligations under (1) above, provided it has filed a declaration with the AFM that its controlled undertaking can exercise the voting rights independently from its parent company.</p> <p>7. The partners in a partnership, including the limited and managing partner(s) in a limited partnership, and other joint owners of a community are generally required to allocate the shares and/or voting rights held by the community pro rata to their entitlement in the partnership.</p> <p>8. A person is considered to have disposal of shares and the attached voting rights: if (1) they hold a financial instrument which value is partly related to the value of the shares or distributions associated therewith, and which does not entitle it to acquire shares (cash settled instruments, such as contracts for difference or total equity return swaps); or (2) it may be obliged to purchase shares on the basis of an option (eg, a put option); or (3) it has concluded another contract whereby it acquires an economic interest comparable to that of holding a share.</p> <p>9. A person is deemed to hold the voting rights in an issuer if they can cast the votes independently and without instructions from the person who granted the power of attorney.</p>
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. The acting in concert rules in respect of the filing requirements are different from the rules in case of a mandatory public offer. With respect to the filing requirements, parties are considered to act in concert when they have entered into an agreement to pursue a sustained joint voting policy and to exercise their voting rights jointly. Such a policy does not exist if it relates to only one general shareholders' meeting. In addition, as long as each shareholder remains free to exercise its voting rights independently, a joint voting policy does not exist.</p> <p>b. A formal agreement or arrangement is not required. Essential is that the parties can mutually deduce that they will exercise their voting rights in a certain way at a number of general meetings of shareholders.</p> <p>There are various facts and circumstances that can cause the AFM to suspect that a long-term agreement to act in concert has been made. The AFM can request information from the parties that are presumed to be cooperating on a strategic issue if, in the run-up to, during or after a general meeting of shareholders, a number, but not necessarily all, of the following facts or circumstances occur:</p> <ul style="list-style-type: none"> • the parties use the same lawyer or legal adviser; • the parties send the issuer letters with the same purport; • the parties jointly initiate (legal) proceedings; • the parties jointly approach the issuer; • the actual voting behaviour of the parties at the general meetings of shareholders is repeatedly similar; • the parties have mutually issued or received instructions relating to behaviour or voting; • a resolution relating to a strategic issue is added, at the initiative of the shareholders, to the agenda of a general meeting of shareholders; • the shareholders have agreed fees or guarantees; • the parties are established at the same address;
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		<ul style="list-style-type: none"> • the parties publicly announce that they are collaborating; • the purchasing/selling behaviour of affiliated parties, for example a (legal) entity bound by a formal or actual control structure; • a (legal) entity which can directly or indirectly exercise a voting right or can exercise certain rights in some other way as a result of which significant influence can be exerted on the commercial or financial policy; and • a natural person who is a family member. <p>This summary of facts and circumstances is not exhaustive.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES, the capital (share) and voting interest should be filed.</p> <p>b. YES. The shareholder is required to file his 'direct actual', 'direct potential', 'indirect actual' and 'indirect potential' capital and/or voting interest, as well as the specific type of instruments within these categories. Shares and/or voting rights which are attributed to a shareholder pursuant to one of the rules listed under (1) to (9) under our answer to Question 5, should be filed as an indirect actual or an indirect potential interest.</p> <p>c. NO.</p> <p>d. YES, the date the filing obligation occurred should be disclosed.</p> <p>e. NO.</p> <p>f. NO. However, specific attribution rules may require such disclosure. See under i below.</p> <p>g. NO.</p> <p>h. NO. Each party should attribute the voting interest of the party acting in concert with them as an indirect voting interest.</p> <p>i. Additional filing requirements may apply for the filing of an indirect holding pursuant to various attribution rules. An example is the name(s) and/or structure of the controlled undertaking(s) under the attribution rules listed under (1) of our answer under Question 5. Other requirements may apply as well.</p>
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<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. NO – the direct/legal owner of shares is not obligated to disclose its holdings if it is not the beneficial owner. However, the direct/legal owner must be identified and included in the disclosure made by the beneficial owner who has disposal of the respective shares.</p> <p>b. YES – the beneficial owner who has disposal over shares or voting rights has an obligation to disclose. This includes not only shares or voting rights actually at their disposal, but also shares or voting rights which it is deemed to have at its disposal (see the explanation under Question 5).</p> <p>Due to various attribution rules, the person with disposal over shares may be different from the person with disposal over voting rights and a share or voting right may need to be attributed to more than one person. For example, in case of a power of attorney where the attorney is authorised to exercise the voting rights in an issuer independently and without instructions (see (1) of our answer to Question 5), both the attorney and the principal must disclose their actual voting rights.</p> <p>c. YES – each individual concert party is deemed to have disposal of the other parties’ voting rights and must submit a separate notification.</p> <p>d. NO.</p>
<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES – the manager of a mutual fund or a fund for collective investment in securities is deemed to have the shares and voting rights held by the depositary of that fund at its disposal. There are no simplified disclosure forms.</p> <p>If the manager in question is a controlled undertaking of another entity (the parent company), the shareholding is not attributed to the parent company as long as the manager can cast the notifiable voting rights at its own discretion and independently from the parent company. This requires, however, that the parent company makes a notification to the AFM without delay confirming that it wishes to use this exemption, including a statement that the relevant controlled company (the manager) can cast the relevant voting rights at its own discretion.</p>

		<p>b. YES – there are no specific exceptions or simplified disclosure forms for passive investors.</p> <p>c. Certain financial companies that have substantial holding in the context of their specific business activities may be exempted from disclosure obligations:</p> <ul style="list-style-type: none"> • clearing or settlement institutions and national central banks are exempt to the extent they hold shares, voting rights or short positions in the exercise of their normal professional or business activities and for a short duration (maximum three trading days); • custodians of shares are exempt to the extent they hold shares and the attached voting rights in the exercise of their business activities and they cannot freely exercise the voting rights; • market makers that reach or cross the threshold of three per cent or five per cent, to the extent they do not exert any influence on the issuer’s management and have an appropriate license for the performance of their business activities; and • persons who acquire or lose disposal of shares and the associated voting rights in the context of stabilisation purposes, to the extent that the votes are not cast or otherwise used to exert influence over the issuer’s management.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. YES – a revision is triggered if a shareholding reaches, exceeds or falls below any threshold as described in Question 1.</p> <p>c. NO</p> <p>d. YES – if the composition of a shareholding with regards to actual interest or potential interest changes, a notification obligation may be triggered. This is the case if:</p> <ul style="list-style-type: none"> • the actual interest, irrespective of the potential interest or total interest, reaches, exceeds or falls below a threshold; • the potential interest, irrespective of the actual interest or total interest, reaches, exceeds or falls below a threshold; and • the total interest, irrespective of the actual interest or potential interest, reaches, exceeds or falls below a threshold. <p>For example, in a securities lending agreement, the person borrowing securities for consideration will acquire actual voting rights. The voting rights of the person lending securities will change from an actual voting right to a potential voting right, while the total interest remains the same. If such changes result in reaching or crossing a notification threshold, this triggers a notification obligation for both the lender and borrower.</p> <p>e. Without delay, or in case of a passive change, within four days (please also refer to Question 2).</p> <p>f. NO – there is no moratorium on further acquisitions until (or for some period after) the disclosure is made. Once an investor reaches, exceeds or falls below a threshold, they are free to continue trading, provided they: (1) disclose their share capital interest and/or voting rights without delay; and (2) disclose again upon reaching, exceeding or falling below another threshold.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES – if a party with a notification obligation wrongly fails to submit a notification, this could in certain circumstances constitute a punishable act under criminal law. The maximum sanctions for this violation are: (1) a prison sentence of up to six months (two years if committed intentionally); (2) a community service order; or (3) a fine up to €25,750 for natural persons and up to €103,000 for legal persons.</p> <p>b. YES – The AFM is authorised to impose an administrative fine if a party with a notification obligation wrongfully fails to submit a timely notification. The maximum fine for violation of the obligation to notify major shareholdings is €10m, or up to ten per cent of total annual turnover in case of a legal person. Before imposing such a fine, the AFM will generally first issue a warning and direct the party to submit a notification within a reasonable term.</p> <p>c. NO</p> <p>d. NO</p> <p>e. YES – One or more holders of shares in the capital of an issuer that hold, alone or jointly, a substantial holding or a special right under the issuer's articles of association, and the issuer may institute a claim before a civil court. The claim must be brought within three months of the day on which the violation was detected or could have been detected. The district court may impose the following measures:</p> <ol style="list-style-type: none"> 1. an order to the person obliged to notify to submit a notification; 2. suspension of the right to exercise voting rights held in the relevant issuer at the disposal of the person obliged to notify, during a term to be determined by the district court of up to three years; 3. suspension of a resolution of the general meeting of shareholders of the relevant issuer until a decision on a measure as referred to at (4) becomes final;
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		<p>4. a declaration that a resolution of the general meeting of shareholders of the relevant issuer is void, to the extent that it is likely that this resolution would not have been adopted if the voting rights at the disposal of the person obliged to notify had not been exercised; and</p> <p>5. an order to the relevant person obliged to notify, to refrain from acquiring the disposal of shares or voting rights in the relevant issuer, during a period to be determined by the district court of at most five years.</p>
12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES – A person must make a mandatory public offer if it acquires, alone or acting in concert with others, directly or indirectly, a controlling interest in an EU-listed company with a registered office in the Netherlands. If the Dutch target company's securities are exclusively admitted to trading outside the EU/EEA, no MTO requirement applies.</p> <p>b. YES – A 'controlling interest' is the ability to exercise at least 30 per cent of the voting rights in the general meeting of shareholders of the target company.</p> <p>c. An MTO is triggered by the ability to exercise voting rights in the Dutch target company. Whether or not the voting rights are actually exercised is irrelevant, as all voting rights that can be exercised on the target company's securities (whether listed or unlisted) are taken into account when determining whether the 30 per cent threshold has been exceeded. Those who exercise voting rights due to rights other than shares, such as proxies or pledges, can also acquire a controlling interest. The decisive factor is who can ultimately exercise voting rights in relation to the relevant securities. Potential voting rights, for example, in the form of call options, warrants or convertible bonds, do not count as voting rights when determining whether a person has a controlling interest.</p>

		<p>d. An MTO is triggered by any transaction, event or activity as a result of which a person acquires direct or indirect control of 30 per cent or more of the voting rights of the target or, if acting in concert, an aggregate shareholding of more than 30 per cent. The manner in which control is acquired is irrelevant for the applicability of the Dutch MTO requirement. Generally this will occur through block purchases or by stake-building, however, a person may acquire control without any action on its part, for example, if the target company buys back its own shares.</p> <p>With respect to the MTO requirement, acting in concert means persons cooperating under an agreement (oral or written) with the purpose of acquiring a controlling interest in the company or, if in cooperation with the target company, to frustrate an announced public bid. Affiliated companies (group companies and controlled companies) are deemed to be acting in concert.</p> <p>e. YES – The obligation to make a mandatory offer will lapse if a shareholder that has gained a controlling interest is able to reduce its shareholding below the MTO threshold within the so-called ‘30-day grace period’, unless such shareholder has exercised their voting rights during the 30-day period or if the interest is transferred to a person that can invoke a statutory exemption. The grace period may be extended by 60 days.</p> <p>Other situations where the acquirer is exempt from the MTO requirement under certain circumstances include:</p> <ul style="list-style-type: none"> • a controlling interest is obtained in a scheme for collective investment in transferable securities or an investment company that allows participants to request direct or indirect redemption or repayment of their shares or units; • more than 50 per cent of voting rights are obtained as a result of a full (voluntary) public offer; • a controlling interest obtained by an independent foundation as part of a protective measure against hostile bids for a maximum period of two years;
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		<ul style="list-style-type: none"> • the acquirer is an independent trust office that has issued depository receipts; • intra-group transfers of the controlling interest; • a controlling interest is obtained in a company in moratorium or bankruptcy; • hereditary succession; • a controlling interest is acquired simultaneously with one or more other persons provided that the MTO requirement applies to the person who can exercise the most voting rights. In case of a simultaneous acquisition by group companies (whom are deemed to act in concert), only one of the group companies is required to make a mandatory offer; • a controlling interest was acquired before the shares or depository receipts are admitted to trading on a regulated market for the first time; • the acquirer is a custodian of shares that cannot exercise voting rights at his discretion; • acquisitions through marriage or registered partnerships; • the mandatory offer leads to competition law issues; • the general meeting of the target consents before the offeror obtains control that no mandatory offer should be made; the consent must be carried by 90 per cent of the shareholders other than the acquirer of the controlling interest and its concert parties; • a controlling interest obtained by underwriters for a maximum period of one year, provided that no voting rights are exercised; • depending on the specific voting arrangements, an offeror of a voluntary bid that has an irrevocable undertaking of a major shareholder may be exempted; and
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		<ul style="list-style-type: none"> • the acquirer gains a controlling interest by joining a group of persons acting in concert that has continuously had a controlling interest since before 28 October 2007. <p>There are no opting-out or opting-up mechanisms available in Dutch MTO law. A target's articles of association may only deviate from the MTO requirement if it leads to further shareholder protection, for example, lowering the MTO threshold.</p> <p>f. If the holder of at least 30 per cent of the voting rights fails to make a mandatory offer, it can be forced to do so by the Enterprise Chamber of the Amsterdam Court of Appeals (the 'Enterprise Chamber'). The Enterprise Chamber will only issue an injunction if requested by the target company or by or on behalf of shareholders/depositary receipt holders. In addition to such an injunction, the Enterprise Chamber may order the suspension of voting rights, a prohibition to participate in general meetings, the temporary transfer of interests or the suspension/annulment of general meeting resolutions.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES – The offer price in an MTO must be a ‘fair’ (<i>billijk</i>) price. A fair price is the highest price paid by the offeror, or by persons acting in concert with the offeror, for the relevant securities in the year prior to the announcement of the mandatory offer. If the offeror did not acquire any securities during this period, the average share price quoted on the stock exchange during the preceding year will be deemed fair.</p> <p>If, after announcing the MTO, the offeror acquires securities at a price higher than the offer price, that higher best price must be paid to all shareholders. The offer price may only be increased. The increased offer price also applies retroactively. Post-completion, an offeror is not allowed to acquire securities under more favourable conditions than offered in the MTO within one year of publishing the offer document.</p> <p>b. NO – Unlike a voluntary offer, mandatory offers should be unconditional.</p> <p>c. NO – The offer price may be paid in securities, in cash, or in a combination of the two. For mandatory offers, if securities are offered, these must be liquid and admitted to trading on a regulated market.</p> <p>d. Certainty of funds: an offeror must procure that, at the time of the request for approval of the offer document, it is able to pay the consideration in cash or has taken all reasonable measures to provide any other type of consideration to declare the offer unconditional. As soon as the offeror has ‘certainty of funds’, it must make a public announcement to that effect.</p>
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14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	<p>YES – A target company can request that the AFM requires a potential offeror to clearly state its intentions regarding a possible public takeover offer. If the AFM imposes the 'put up or shut up' rule, the potential offeror must, within six weeks, make a public announcement as to whether it intends to launch an offer or not. If the potential offeror states that it will not announce a public takeover offer, it will not be able to announce a new public offer for the same target company for six months. This period is nine months if the potential offeror fails to comply with the 'put up or shut up' rule imposed by the AFM. In addition, the offeror may not assume a controlling interest in the target company during such a six or nine-month period.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Nigeria

	Which jurisdiction are you covering?	Nigeria
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>In Nigeria, disclosure is required when an individual or entity acquires up to five per cent or more of a public company’s shares. This is stipulated under Rule 17 of the SEC Rules and Regulations (2013, as amended) and section 120 of the Companies and Allied Matters Act (CAMA) 2020.</p> <p>The shareholder must notify the company within 14 days of becoming aware of the acquisition. The company is also required to inform the Securities and Exchange Commission (SEC) and disclose it in its next general meeting</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Within 14 days of becoming aware of the acquisition or change in interest, the shareholder must disclose the stake to the company (section 120(2) of CAMA 2020).</p> <p>b. The disclosure is made in writing to the company. The company is then required to notify the SEC and record the disclosure in its register of members. It must also be disclosed at the next annual general meeting. There is no mandatory press release or public market announcement, but listed companies may voluntarily disclose material shareholding changes through the Nigerian Exchange (NGX) platform.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. Voting shares?</p> <p>YES. Only voting shares (equity with voting rights) are considered in calculating significant shareholding under CAMA 2020 and SEC Rules.</p> <p>b. Non-voting shares?</p> <p>NO. Non-voting shares are not counted towards the disclosure threshold unless they later convert into voting shares.</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments.</p> <p>YES, but only if exercisable or convertible within a defined period.</p> <p>Must such instruments be exercisable/convertible within a time period?</p> <p>Instruments must be capable of conversion into voting shares, usually within 60 days, to be relevant for disclosure (based on SEC practice).</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>NO. These are not recognised under current Nigerian regulations for the purpose of stake disclosure, as they do not confer voting rights or beneficial ownership.</p> <p>e. Instruments giving voting rights but no economic benefit (eg, borrowed shares)?</p> <p>NO. Borrowed shares may temporarily convey voting rights, but unless beneficial ownership transfers, they are not counted towards the disclosure threshold.</p> <p>f. Other type of instruments?</p> <p>Rights issues, if taken up and converted into voting shares, are counted after allotment. Employee share schemes may also count once vested and exercisable.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. Acquisition of beneficial ownership?</p> <p>YES. Disclosure is triggered when a person acquires five per cent or more beneficial ownership in a public company, according to section 120(1) of CAMA 2020.</p> <p>b. Acting in concert or forming a group in relation to the securities?</p> <p>YES. Parties acting in concert must aggregate their holdings for disclosure and may trigger a mandatory tender offer (MTO) under SEC Rules if control thresholds are crossed.</p> <p>c. Securities lending, short positions, etc?</p> <p>NO. These do not currently trigger disclosure under Nigerian law unless beneficial ownership or voting control is transferred, which is rare in lending or short positions.</p> <p>d. Sale?</p> <p>YES. Disclosure is required when a person ceases to be a substantial shareholder (falls below five per cent), according to section 120(4) of CAMA 2020.</p> <p>e. Mere passive reach of threshold (eg, stock buyback)?</p> <p>YES. If a shareholder’s percentage increases passively due to company actions (like buybacks), disclosure is still required once the five per cent threshold is crossed.</p> <p>f. Other?</p> <p>An inheritance, gift or transfer through family arrangements may trigger disclosure if it results in beneficial ownership of five per cent or more.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Under section 120 of CAMA 2020 and Rule 17 of the SEC Rules, disclosure is triggered by beneficial ownership, which includes:</p> <p>a. economic interest – the right to receive dividends or other financial benefits from the shares;</p> <p>b. power to direct the voting of the securities – even if not the legal owner, a person with voting control must disclose;</p> <p>c. power to direct the holding or disposition of the securities – such as control over sale or transfer;</p> <p>d. all of a, b or c; and</p> <p>e. any of a, b or c.</p> <p>These powers may be held directly or indirectly, alone or jointly with others (eg, through nominees or trustees). Thus, any of the listed powers individually or collectively constitutes beneficial ownership for disclosure purposes.</p>
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. What constitutes acting in concert/forming a group?</p> <p>In Nigeria, ‘acting in concert’ refers to two or more persons cooperating, formally or informally, to acquire or exercise control or influence over a public company. This includes coordinating acquisitions, voting rights or strategic decisions regarding securities.</p> <p>This is recognised under SEC Rules on Takeovers & Mergers and is relevant when determining whether an MTO is triggered.</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p> <p>NO formal agreement is required. Even parallel actions or informal collaboration can qualify as acting in concert if there is a common intention to control or influence the company. The SEC may infer concerted action from the facts and conduct of the parties, regardless of a written agreement.</p>

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. Percentage of equity owned?</p> <p>YES. The shareholder must disclose the exact percentage of shares held, especially when crossing or falling below the five per cent threshold. According to section 120(2) of CAMA 2020.</p> <p>b. Number and type of instrument?</p> <p>YES. The number and class of securities (eg, ordinary shares and preference shares) must be disclosed to the company.</p> <p>c. Source of funds?</p> <p>NO (generally not required). Disclosure of source of funds is not mandatory under Nigerian law, unless required under anti-money laundering or specific takeover rules.</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>NO (not in routine disclosure). Basic disclosure to the company under CAMA does not require acquisition date or price. However, this may be required in a public offer, takeover bid or capital market transaction subject to SEC review.</p> <p>e. Purpose/declaration of intent?</p> <p>NO (not required in general disclosure). Routine shareholder disclosures under CAMA do not require stating intent. However, this may be required during takeover proceedings or when filing with the SEC for control acquisition.</p> <p>f. Description of relevant agreements/arrangements?</p> <p>YES (if applicable). If the shares are held pursuant to voting arrangements, nominee structures or trust relationships, these must be disclosed under SEC rules.</p> <p>g. Filing of agreements and arrangements described in (f)?</p> <p>NO (not in routine disclosure). While a description may be required, the actual filing of agreements is not typically mandated, except during a formal M&A or control transaction.</p>
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		<p>h. Concert parties (members of group)?</p> <p>YES. Disclosure must include names of persons acting in concert, especially when jointly triggering a MTO under SEC rules.</p> <p>i. Other?</p> <p>In takeover or merger contexts, the SEC may require further disclosures, such as ultimate beneficial ownership, nominee details or foreign control information.</p>
8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. Direct/legal owner?</p> <p>YES. A person whose name is entered in the company's register of members (legal holder of the shares) is required to disclose when reaching or crossing the five per cent threshold, according to section 120 of CAMA 2020.</p> <p>b. Beneficial owner?</p> <p>YES. Disclosure is also required from the beneficial owner – that is, a person who holds or controls shares indirectly through nominees, trusts or other arrangements – even if not listed in the register. This is reinforced by SEC beneficial ownership reporting requirements and anti-money laundering (AML) regulations.</p> <p>c. Parties acting in concert?</p> <p>YES. Persons acting in concert must disclose their individual holdings and aggregate interests when they cross applicable thresholds or trigger a MTO under SEC Takeover Rules.</p> <p>d. Other?</p> <p>Companies are also required to keep a register of substantial shareholders and ensure that disclosures are passed on to the SEC and included in AGM documentation.</p> <p>Issuers may be required to report shareholder changes to the Nigerian Exchange (NGX) depending on materiality.</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. Must money/asset managers disclose their positions?</p> <p>YES. Asset managers must disclose their holdings if they have beneficial ownership or voting power reaching five per cent or more. No short form is provided under Nigerian law; disclosure must be in full compliance with section 120 of CAMA 2020 and SEC rules.</p> <p>b. Must passive investors disclose their positions?</p> <p>YES. Even passive investors (who acquire shares without intent to control) must disclose upon reaching the five per cent threshold. There is no exemption or short form for passive status. Disclosure is based on beneficial ownership, not intent.</p> <p>c. Other exceptions/short form of disclosure?</p> <p>Currently, Nigerian regulations do not provide express exceptions or alternative disclosure formats based on investor type. However, in regulated takeovers, institutional investors (like pension funds or banks) may be treated differently regarding control thresholds but not exempt from disclosure.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. Any trigger for revision of the disclosure statement?</p> <p>YES. A revision is required when there is a change in the percentage of shareholding that affects substantial interest (ie, crossing above or below the five per cent threshold), or when a shareholder ceases to be a substantial shareholder, according to section 120(4) of CAMA 2020.</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>Any acquisition that causes the person to cross a new multiple of five per cent, or move below five per cent, triggers a disclosure. Significant upward or downward movements (eg, five per cent, ten per cent, 15 per cent) typically warrant revision.</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>NO, not under standard shareholding disclosure rules. However, under SEC Takeover/Control regulations, a change in control intent or acquisition purpose must be disclosed when pursuing an MTO or other regulatory approval.</p> <p>d. Any other triggers for a revision requirement?</p> <p>YES, a shareholder must also disclose if they cease to be a substantial shareholder, that is, if their holdings drop below five per cent. Disclosure may also be revised if shares are transferred by gift, inheritance or restructured under a merger.</p> <p>e. How soon must the revision be filed?</p> <p>Within 14 days of becoming aware of the change, according to section 120(2) and (4) of CAMA 2020.</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p> <p>NO general moratorium; however, in a takeover situation regulated by the SEC, the acquirer must not proceed further without SEC clearance or after failing to make an MTO when required.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. Criminal sanctions?</p> <p>YES. Under section 120(6) of CAMA 2020, failure to disclose substantial shareholding is an offence and may attract a fine or imprisonment upon conviction. The Investment and Securities Act (ISA) 2007 also empowers the SEC to pursue criminal prosecution where misleading or non-disclosure affects the market.</p> <p>b. Regulatory sanctions?</p> <p>YES. The SEC may impose administrative sanctions, including:</p> <ul style="list-style-type: none"> • monetary fines; • suspension from capital market activities; and • disqualification of directors or responsible persons. <p>Sanctions are typically enforced under SEC Rules and ISA 2007.</p> <p>c. Damages?</p> <p>YES (in civil suits). Shareholders or affected parties may claim damages in court if the non-disclosure causes financial harm (eg, in mergers, takeovers or misrepresentation cases).</p> <p>d. Equitable relief (eg, loss of voting rights or divestment)?</p> <p>YES. Courts or the SEC may restrict voting rights, nullify transactions or order divestment of shares acquired in violation of disclosure rules, especially where there's market manipulation or abuse of control.</p> <p>e. Private right of action?</p> <p>YES. Under CAMA 2020, aggrieved parties (eg, shareholders) can bring civil suits for non-compliance. However, enforcement of criminal and administrative sanctions is reserved for the SEC and the Attorney General, where applicable.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. Has your jurisdiction an MTO requirement?</p> <p>YES. Nigeria has an MTO regime regulated under the Investment and Securities Act (ISA) 2007, the SEC Rules and Regulations, and the Takeover Code issued by the SEC.</p> <p>b. Level/threshold?</p> <p>YES. An MTO is triggered when an acquirer (acting alone or in concert) acquires 30 per cent or more of the voting rights in a public company or increases their holding beyond 30 per cent, according to Rule 445, SEC Rules.</p> <p>c. What type of instruments/securities trigger MTO?</p> <p>Voting equity securities, including:</p> <ul style="list-style-type: none"> • ordinary shares; and • preference shares with voting rights. <p>Derivative instruments or convertible securities may trigger MTO if they are exercised or converted into voting rights.</p> <p>d. What transactions/events/activities trigger MTO?</p> <p>The following may trigger an MTO:</p> <ul style="list-style-type: none"> • acquisition of beneficial ownership reaching or exceeding 30 per cent; • acting in concert to control or influence the company; • creeping acquisitions (further acquisition after 30 per cent threshold); • takeovers, mergers, or schemes of arrangement that confer control; and • indirect acquisition of control, for example, via holding company ownership.
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		<p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>YES. The SEC may grant exemptions in limited cases such as:</p> <ul style="list-style-type: none"> • restructuring within a group; • privatisation or government divestments; and • insolvency-related transactions. <p>Also, under certain conditions, acquirers may opt-up their shareholding beyond 30 per cent with SEC approval if no change of control is intended.</p> <p>f. What are the sanctions if the MTO is not launched/completed?</p> <p>Sanctions include:</p> <ul style="list-style-type: none"> • nullification of the acquisition; • loss of voting rights over the shares acquired; • fines or penalties imposed by the SEC; • orders to divest excess shareholding; and • possible suspension or exclusion from capital market operations. <p>In severe cases, criminal or civil enforcement actions may follow under ISA 2007.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>YES. Under Rule 448 of the SEC Rules, the offer price must not be less than the highest price paid by the acquirer (or any person acting in concert) during the six months preceding the offer. This prevents post-bid price manipulation and ensures equal treatment of all shareholders.</p> <p>b. Can MTO be subject to conditions?</p> <p>YES. MTOs can include conditions, such as:</p> <ul style="list-style-type: none"> • minimum level of acceptance; • regulatory approvals; and • no material adverse change clauses. <p>However, SEC approval is required, and conditions must not be unfair, misleading, or overly restrictive.</p> <p>c. Consideration to shareholders: only in cash?</p> <p>NO. While cash is common, the consideration may be in cash, securities, or a combination, provided:</p> <ul style="list-style-type: none"> • the terms are fair and equitable; • the offer includes a cash alternative; and • valuation reports are submitted to and approved by the SEC. <p>d. Other</p> <p>Additional key features include:</p> <ul style="list-style-type: none"> • equal treatment of all shareholders in the same class; • disclosure requirements including source of funding, offeror's identity, and purpose of acquisition; • timely filing of the offer document and public notification via newspapers or exchange portals; • offer period duration: must remain open for 20 to 30 business days; and • withdrawal of offer is only permitted with SEC approval.
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14.	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>YES. While Nigerian law does not use the term 'put up or shut up', the SEC may require a potential acquirer to announce a formal intention to make an offer within a specific period or cease acquisition efforts, especially where:</p> <ul style="list-style-type: none"> • market speculation affects share prices; • a public interest or takeover rumour is creating uncertainty; • the potential bidder has taken preliminary steps (eg, share accumulation or engagement with insiders); and • in such cases, the SEC may issue directives requiring the acquirer to formally launch a bid or withdraw interest to maintain market integrity and shareholder protection.
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Norway

	Which jurisdiction are you covering?	Norway
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Norway has opted to apply the following thresholds for major holdings disclosure: five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, one-third, 50 per cent, two-thirds and 90 per cent of total number of voting rights or share capital.</p> <p>As further set out below, the thresholds apply on an individual and group basis, related to the specific instruments in question, as well as on an aggregated basis, meaning different instruments are counted together with respect to the disclose threshold.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. The disclosure shall be made promptly. If it is impossible for the obligated party to carry out a correct immediate disclosure, the disclosure shall be made as soon as possible, but under no circumstances later than the opening of the regulated market on the second trading day following the trade triggering the disclosure obligation.</p> <p>The disclosure notification arises at the time an agreement is entered into leading to the reaching or crossing of a disclosure threshold. If the disclosure notification is triggered without the involvement of the relevant holder, the disclosure obligation arises at the time the holder became aware or should have become aware that a disclosure obligation had been triggered.</p> <p>If the acquisition, disposal or other event triggering a disclosure obligation, is subject to conditions which are outside the control of the holder, the disclosure obligation arises at the time such conditions are satisfied.</p> <p>b. There is no standard form required for the notification. The notification must be sent to both the issuer and the Market Administration at Euronext Oslo Børs, which publishes it as a press release.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>a. YES. Holdings of shares with voting rights is subject to:</p> <ol style="list-style-type: none"> 1. individual disclosure, that is, if a disclosure threshold is reached or crossed when only counting the number of voting rights attached to the shares held directly by that particular shareholder ('individual disclosure'); 2. third-party holdings disclosure, if certain forms of agreements provide the relevant party or its controlled undertaking with certain rights with respect to the voting shares held by a third party ('third-party holdings disclosure'); 3. group disclosure, if the number of shares with voting rights held directly and through controlled undertakings, or by third-parties in which the relevant party has certain rights, leads to the reaching or crossing of a disclosure threshold ('group disclosure'); and 4. aggregated disclosure, if a disclosure threshold is reached or crossed when the relevant shares with voting rights are aggregated with voting rights relating to holdings of other relevant instrument, for example, derivatives, on a direct or indirect basis ('aggregated disclosure'). <p>b. YES. Holdings in the share capital of an issuer must be disclosed, regardless of whether the shares carry voting rights, and are subject to individual disclosure, as well as group disclosure.</p>
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		<p>c. YES. Derivative instruments (eg, options to acquire existing shares with voting rights) are counted towards the disclosure threshold, and regardless of whether they are exercisable or convertible within a particular timeframe. However, certain derivative instruments that entitle the holder solely to demand the issuance of new shares (such as subscription rights and particular forms of convertible bonds) are excluded from the disclosure requirements. Derivative instruments also counting holdings pursuant to d below) are subject to individual disclosure, group disclosure and aggregated disclosure.</p> <p>d. YES, financial instruments which do not entitle the holder a right to acquiring physical shares, but which refer to the shares and have an economic effect similar to derivative with the shares as underlying (ie, instruments referred to in c above), are counted towards the disclosure threshold. Where the financial instrument provides exclusively for a cash settlement, the number of voting rights shall be calculated on a 'delta-adjusted' basis, by multiplying the notional amount of underlying shares by the delta of the instrument. Letter (d) instruments are counted together with letter (c) instruments for the purposes of individual disclosure and are also subject to group disclosure and aggregated disclosure.</p> <p>e. YES. Share lending and share borrowing and the return and receipt of lent shares shall be regarded as an acquisition and disposal of the shares with voting rights. In addition, when lending shares, it is necessary to disclose the existence of a right of recall (right of physical settlement) by the lender, which shall be counted as a derivative (as referred to in c above). This right of recall must be disclosed at the time the transaction is entered into.</p> <p>f. Certain other types of instruments, having the relevant shares as underlying, such as, forward rate agreements, or contracts or agreements with similar economic effects – whether settled physically or in cash – are also included.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>YES.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Norwegian law does not employ a US-style 'beneficial ownership' concept and there is no such definition available in Norwegian law.</p> <p>a. Economic interest may be included and subject to disclosure if the economic interest provides an economic effect similar to owning those shares, even if the instrument does not grant actual voting rights or direct ownership.</p> <p>b. The power to exercise or direct voting rights with respect to shares itself will, as a main rule, trigger disclosure.</p> <p>c. The parent undertaking with powers to direct the holding or disposition of securities of controlled undertakings will generally have a disclosure obligation of the holdings of the controller undertaking. Otherwise, the powers to direct the holding or disposition of securities will not trigger specific disclosure.</p> <p>d. Holding all the rights as set out in a, b and c will trigger disclosure obligation.</p> <p>e. Please refer to a – c above</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Under Norwegian law, disclosure obligations are triggered when a person who can exercise voting rights has entered into an agreement or understanding – whether written, oral, or otherwise – with a third party to pursue a long-term, common strategy concerning the management of the relevant issuer through the coordinated use of their voting rights. This constitutes acting in concert.</p> <p>Disclosure obligations also apply to holdings held through a controlled undertaking (including but not limited to forming a group). A 'controlled undertaking' is defined as an entity in which the person:</p> <ul style="list-style-type: none"> • holds a majority of the voting rights, • has the right to appoint or remove a majority of the board or equivalent body and is also a shareholder/participant, • is a shareholder/participant and, alone or by agreement with others, controls a majority of the shareholders'/participants' voting rights; or • otherwise has the right or actually exercises dominant influence or control. <p>The disclosure obligation applies to shares with voting rights attached and additionally to holdings in the share capital held by a person's controlled undertakings, including such holdings that the controlled undertaking can influence on the basis of an agreement or other circumstances (ie, third-party holdings disclosure as set out above).</p> <p>The disclosure obligation also applies to financial instruments with existing shares with voting rights attached as underlying held by controlled undertakings, including such holdings which the controlled undertaking would be obligated to include in its disclosure of voting rights of financial instruments other than shares (ie, third-party holdings disclosure as set out above).</p>
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		<p>b. Group: What constitutes a group is generally based on shareholding and the relevant applicable company law.</p> <p>Acting in concert: A formal written agreement is not strictly necessary; an unwritten arrangement could be sufficient if it involves a genuine commitment to coordinate the exercise of voting rights towards a shared, long-term strategy. Mere 'parallel action,' in the sense of independent but similar decisions made without any actual cooperation or arrangement does not constitute acting in concert under Norwegian law.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES. The updated holding with respect to both percentage and absolute number of shares and voting rights held by the reporting party.</p> <p>b. YES. The notification must state the number of shares, as well as the percentage of shares and voting rights held in the form of rights to shares. If the notification concerns rights to shares (such as derivatives or other financial instruments), it must include a description of these rights, including when they can or must be exercised and their expiry date. Additionally, the notification must provide a breakdown by type of financial instrument, distinguishing between instruments that give the right to physical settlement and those that give a right to financial settlement.</p> <p>c. NO. There is no requirement to disclose the source of funds used in any acquisition.</p> <p>d. Disclosure of the date is required but not the price.</p> <p>e. NO. There is no requirement to state the purpose, future plans or intention of the acquisition.</p> <p>f. YES. Limited to a description of the chain of controlled undertakings and circumstances triggering the disclosure obligation, including underlying arrangements if these cause the event.</p> <p>g. NO. There is no express requirement for filing the agreements themselves with the Norwegian Financial Supervisory Authority (Finanstilsynet) – only disclosure of their relevance in causing the disclosing event is required.</p> <p>h. YES. There is no express disclosure field titled ‘concert parties’. Nevertheless, where persons are acting in concert, all parties whose holdings are aggregated for threshold purposes must be explicitly identified as holders in the disclosure. As such, the identities of all relevant concert parties are disclosed, albeit not within a separate or specifically designated section.</p>
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<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. Disclosure is required by the person or entity that is considered to hold or control shares or rights to shares as defined by the Norwegian disclosure rules. As shown in previous answers above, this may extend beyond the registered or legal owner to include beneficial owners, persons exercising control or other parties acting in concert.</p> <p>b. Not all legal holders will always be subject to the disclosure obligation. For example, where shares are held by a nominee who is only permitted to exercise voting rights in strict accordance with detailed instructions from the actual underlying shareholder, the nominee itself is generally not required to disclose. In such circumstances, the disclosure obligation will instead rest with the underlying beneficial owner.</p> <p>c. The person who ultimately controls and benefits from the rights attached to the shares is subject to the disclosure requirement, whether the shares or rights are held directly or indirectly.</p> <p>d. Each party to an agreement or understanding for coordinated exercise of rights must make a third-party holdings disclosure.</p>
<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. In Norway, there is no prescribed 'long form' or standard template for disclosure notifications. Disclosures must comply with the content requirements set out by regulation, but the actual notification can be tailored to the particular case. Therefore, there is no concept of a formal 'short form' or exception for specific types of investors, such as asset managers or passive investors. All investors must ensure that their notifications contain the necessary information as required by law, but the form of the notice may be adapted as appropriate to the situation.</p> <p>a. YES.</p> <p>b. YES.</p> <p>The following holdings are exempt from the Norwegian Securities Trading Act/Norwegian Securities Trading Regulation:</p>

		<ul style="list-style-type: none"> • Clearing and settlement: shares acquired (or financial instruments acquired that relate to underlying shares) for the sole purpose of clearing and settlement within a two-day settlement cycle. • Custodian/nominee: shares held (or financial instruments held that relate to underlying shares) by a custodian or nominee provided that the custodian or nominee can only exercise the voting rights attached to such shares under written instruction. EU-regulated market maker: shares held (or financial instruments held that relate to underlying shares) reaching or crossing the five per cent threshold by a market maker acting in that capacity, provided the market maker is authorised under Directive 2014/65/EU and it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price. Market makers that are trading in shares or rights to shares in an issuer with Norway as home state shall notify the Norwegian Financial Supervisory Authority without delay in case it wants to take advantage of this exception. • EU-regulated trading book: shares held (or financial instruments held that relate to underlying shares) by an EU-regulated credit institution or investment firm within its trading book, provided that the voting rights attached to the shares do not exceed five per cent and the voting rights are not exercised or used to intervene in the management of the issuer. • Stabilisation: shares acquired for stabilisation purposes, provided that the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer; • ESCB: shares provided to or by the European System of Central Banks in carrying out their functions as monetary authorities, including shares provided to or by members of the European System of Central Banks under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system, provided that the transactions last for a short period and the voting rights attached to such shares are not exercised.
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		<ul style="list-style-type: none"> • Parent companies of management companies: parent companies of management companies which are managing its assets pursuant to the rules applicable for undertakings for collective investment in transferable securities (CITS) and investment companies providing portfolio management and licensed as such (MiFID II), or firms outside the EEA adhering to equivalent rules, may be exempt from aggregating its holdings with such holdings of the subsidiary undertaking, provided the subsidiary undertaking exercises voting rights independently and without any form of involvement of the parent company, if a notification of such (disaggregation notice) is submitted in advance to the Norwegian Financial Supervisory Authority.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. NO. Norwegian law does not contemplate or require the amendment or updating of a previously submitted disclosure notification. Each notification obligation stands alone and is tied to a distinct triggering event; specifically, the crossing of statutory thresholds in ownership or voting rights. Once submitted, a prior notification is not amended, but rather remains as a record of holdings at that point in time. However, if a disclosure is found to be incorrect, false or misleading, the Norwegian Financial Supervisory Authority may require the submission of a correction or rectification notification. This requirement applies when necessary to correct factual errors or misleading information in a prior notification.</p> <p>b. N/A. Any subsequent increase or decrease in holdings which results in the crossing of a new disclosure threshold obliges the shareholder to file a new, separate notification rather than amending or updating an existing one.</p> <p>c. NO. A change in the shareholder's intent or purpose – absent a transaction or event that triggers a threshold crossing – does not give rise to any requirement to amend or update a prior notification.</p> <p>d. NO. All disclosure obligations are fulfilled by submitting new notifications upon the occurrence of the relevant triggering events. However, please see (a) above regarding the possibility of rectification if the original notification was incorrect, false or misleading.</p> <p>e. N/A. The requirement to file applies only to new notifications triggered by statutory events; there is no timeline governing the amendment of previous disclosures, as such a mechanism does not exist under Norwegian law.</p> <p>f. NO. There are no statutory restrictions or standstill obligations relating to amendments or updates of previous notifications.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. Pursuant to Norwegian law, intentional or negligent violations of the disclosure requirements may be sanctioned with criminal penalties, including fines and imprisonment for up to one year.</p> <p>b. YES. The Norwegian Financial Supervisory Authority is empowered to impose administrative fines for delayed, omitted or incomplete disclosure notifications. For legal entities, the fine may be up to NOK 82m, or five per cent of the entity's latest approved annual turnover, whichever is higher. For natural persons, the maximum is NOK 17m. Alternatively, the fine may be set at up to twice the profit gained or loss avoided.</p> <p>c. NO, as a general rule. Norwegian law does not provide an explicit right to claim damages arising from breaches of stake disclosure obligations. While general tort principles may theoretically permit compensation in cases of provable loss and causation, such cases are exceptional and not characteristic of the enforcement regime.</p> <p>d. YES. The Norwegian Financial Supervisory Authority may order the suspension of the infringer's right to vote for shares acquired in breach of the disclosure rules if determined necessary to protect other market participants or the integrity of the market. The suspension may apply to voting rights above the relevant threshold and may remain in effect until compliance is achieved or for a specified period.</p> <p>e. NO private right of action. Enforcement of the stake disclosure regime rests exclusively with public authorities, primarily the Norwegian Financial Supervisory Authority.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES. Norway imposes a mandatory takeover offer (MTO) requirement for certain acquisitions in companies listed on a Norwegian regulated market, as well as for companies with their main offices in Norway, that are listed on a regulated market in other EEA Member States.</p> <p>b. The statutory threshold is the acquisition of shares representing more than one-third of the voting rights.</p> <p>There are also successive MTO thresholds. An acquirer who already controls more than one-third must make a new MTO if the holding increases to 40 per cent or more, and again at 50 per cent or more of the voting rights (unless the increase occurs as part of a previous mandatory or a voluntary offer structured in the form of an MTO).</p> <p>Additionally, any subsequent acquisition (even of a single share) will trigger the MTO obligation if the acquirer, following the listing of the issuer, crossed a threshold (eg, one-third, 40 per cent or 50 per cent) in a manner that did not trigger an MTO at the time.</p> <p>c. The rules on mandatory bids apply to control through the acquisition and ownership of shares with voting rights, and not to other financial instruments. However, a mandatory bid may be imposed by the Norwegian Financial Supervisory Authority in relation to acquisitions of other financial instruments that are in reality to be regarded as a share acquisition.</p> <p>In addition, an MTO is triggered by acquisition of shares representing more than 50 per cent of the votes in a company whose main activity is to own shares in the listed company.</p> <p>d. An MTO is triggered by an acquisition – whether direct or indirect – of shares or rights to shares that results in the acquirer exceeding one-third or reaching the 40 per cent or 50 per cent voting rights threshold in a listed company, including through:</p> <ul style="list-style-type: none"> • Direct acquisitions: The purchase or other acquisition of shares by a person or company.
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		<ul style="list-style-type: none"> • Indirect or coordinated acquisitions: If related parties, such as groups acting in concert or individuals/entities with close connections, acquire or already own shares, their holdings are aggregated for the purpose of determining whether the threshold is passed. • Successive or incremental acquisitions: An additional MTO obligation may arise for subsequent acquisitions once the acquirer has previously passed a relevant threshold, each time a higher trigger threshold is crossed. • Beneficial ownership and control: Where a party acquires de facto control or the beneficial interest in shares, not merely the legal title, an MTO may be triggered. <p>The forming of a concerted group with an aggregated holding above the MTO threshold will not in itself trigger an MTO, but any consecutive acquisition of voting shares by a party of the concerted group would trigger an MTO.</p> <p>e. YES. There are limited exceptions and flexibilities to the MTO requirement. Certain acquisitions, such as those resulting from inheritance, gift, settlement of an estate or receipt of consideration shares as a result of a merger, or demerger, are excluded and do not trigger the MTO obligation.</p> <p>In specific cases, the authority may require that an MTO is made even where a statutory exception would otherwise apply, or may allow an exemption from the MTO requirement for particular types of intra-group or related party transactions where ultimate control does not change. If an acquirer has already made a voluntary offer in full compliance with the MTO requirements, and this is clearly disclosed, the MTO obligation may be avoided even if the relevant thresholds are crossed as a result.</p>
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		<p>f. The Norwegian Financial Supervisory Authority (NFSA) is empowered to require a party to rectify a breach of the MTO provisions, and failure to meet such requirements can be sanctioned by criminal fines or up to one year of imprisonment.</p> <p>The NFSA is further empowered to impose administrative fines for improper disclosure obligations or failure to meet the NFSAs request for information regarding the fulfilment of the MTO provisions. For legal entities, the fine may be up to NOK 43m, or ten per cent of the entity's latest approved annual turnover, whichever is higher. For physical persons, the maximum is NOK 43m. Alternatively, the fine may be set at up to twice the profit gained or loss avoided.</p> <p>If an MTO is not made within the four weeks of being triggered, the NFSA may impose daily fines. The amount of the daily fine is not limited by law.</p> <p>In addition, shareholders who neglect their obligation to make an MTO may not, while the obligation exists, exercise any rights in the company other than the right to dividends and pre-emptive rights in the event of a capital increase, without the consent of a majority of the other shareholders.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>1. YES. There are clear statutory restrictions and requirements on bid pricing in connection with an MTO. The offer price must be at least as high as the highest price the offeror (and its related parties) has paid or agreed to pay for shares in the target company during the six months preceding the mandatory offer obligation.</p> <p>In addition, if the offeror pays or agrees to pay a higher price for shares after the obligation to make an offer has arisen but before the end of the offer period, the offer price shall be adjusted to match the higher price. All shareholders must be offered equal treatment, and the offer must encompass all outstanding shares, regardless of class or voting rights.</p> <p>2. A mandatory tender offer cannot be made conditional. However, the offer may stipulate more detailed procedures for how it is accepted and how settlement will take place, and may also implement such restrictions on the offer as are permitted by law, for example, downward adjustment of the offer price in the event of distributions by the target company.</p> <p>Although the offeror may give shareholders the option to choose alternative consideration as part of the MTO, a cash settlement alternative is required.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>Norway does not have a typical 'put up or shut up' mechanism triggered by public interest or rumour. However, once the mandatory offer obligation is triggered, the acquirer must immediately declare whether it will launch a mandatory offer or sell down. If the acquirer does not act within the applicable timeframes, regulatory action (including forced sale of shares) can be imposed.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Pakistan

	Which jurisdiction are you covering?	Pakistan
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>We will address the matter under the Companies Act 2017 the 'CA', the Securities Act 2015 the 'SA' and the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations 2017 the 'Takeover Regulations'.</p> <p>Directors, executives and substantial shareholders of a listed company must disclose their shareholdings and any changes (including gains) in writing to the company.</p> <p>These disclosures must specify details of the securities and be submitted within seven days of the event. Please note that in this memorandum, we will not be considering such mandatory disclosures by directors, executives and substantial shareholders as they are designed to prevent insider trading rather than to address stake building.</p> <p>Otherwise, under section 110 of the SA¹ read with Regulation 4(2) of the Takeover Regulation,² disclosure obligations are triggered upon the attainment of specified shareholding thresholds. An initial disclosure is mandated where any person acquires ten per cent or more of the voting shares of a listed company.</p> <p>Following the initial disclosure at the ten per cent threshold, the acquirer may continue to purchase shares within a period of 12 months³ without any further disclosure requirement, provided that its aggregate holding does not exceed 30 per cent. If the 30 per cent threshold will be crossed by any acquisition, the mandatory takeover provisions under section 111 of the SA⁴ and Regulation 4(3) of the Takeover Regulations⁵ are triggered. Moreover, It is our interpretative view that</p>

1 S 110 of the Securities Act – www.secp.gov.pk/document/securities-act-2015/?wpdmdl=648&refresh=68a6f2b4619e01755771572 accessed 23 March 2026.

2 Regulation 4(2) of the Takeover Regulations – www.secp.gov.pk/document/listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2017-amended-upto-sep-30-2022-2/?wpdmdl=46165&refresh=689f165c692e11755256412 accessed 23 March 2026.

3 S 110(3) of the Securities Act.

4 S 111 of the Securities Act.

5 Regulation 4(3) of the Takeover Act.

		<p>where further acquisitions are effected following the lapse of 12 months from the most recent disclosure, a new disclosure obligation is triggered, irrespective of whether the 30 per cent threshold will be crossed or not.</p> <p>A critical threshold is at 30 per cent or more of voting shares (or acquisition of control), which activates the mandatory takeover regime. In such cases, both the acquirer and the target company are obliged to make immediate disclosures. The acquirer is required to make a public announcement of intention before commencing any due diligence or entering into share purchase agreement negotiations in respect of the target company. The target company must similarly make an announcement when it is notified of an acquirer's firm intention in this regard. Acquisitions of more than 30 per cent are not allowed unless the acquirer follows the mandatory public offer process.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>An acquirer is required to disclose any acquisition resulting in a holding of ten per cent or more of the voting shares within two working days, through the prescribed form under Schedule III of the Takeover Regulations.</p> <p>Subsequent acquisitions beyond the 30 per cent threshold must likewise be disclosed in the prescribed form under Schedule IV of the Takeover Regulations. If a proposed acquisition will result the 30 per cent voting shares threshold being cross, then the mandatory takeover regime is triggered, necessitating immediate disclosure, publication of an intention announcement and the making of a public offer to the remaining shareholders. The requirement to make a public announcement of intention is triggered prior to commencing due diligence or negotiations in relation to a share purchase agreement for the acquisition of a stake that will make the acquirer cross the 30 per cent threshold.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference?)</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES, the disclosure thresholds (ten per cent or more) apply to voting shares of a listed company.⁶</p> <p>b. NO, non-voting shares are excluded, as they do not confer control or influence in shareholder decision-making.</p> <p>c. YES, noting that derivative instruments do not, in themselves, ordinarily confer voting rights. However, the expression ‘voting shares’⁷ is construed to include securities which entitle the holder to acquire or exercise voting rights. Accordingly, a derivative would only be regarded as a voting share upon conversion into equity or where it otherwise grants the right to exercise such voting rights pursuant to an arrangement. On this basis, derivatives may trigger disclosure thresholds.</p> <p>d. NO, since no actual voting rights arise, they do not count towards disclosure thresholds.</p> <p>e. YES, Instruments conferring voting rights without economic interest are included in the disclosure threshold. The rationale is that under section 2(xiii) of the SA, ‘control’⁸ encompasses the ability to exercise voting rights, whether or not accompanied by economic entitlement.</p> <p>f. Pertaining to the other instruments:</p> <p>1. Agreements granting voting control (eg, shareholders or voting pacts) fall within the definition of ‘control’ under section. 2(xiii) of the SA as mentioned above, thereby triggering the takeover regime, including Regulation 4 of the Takeover Regulation disclosures for acquirers and Regulation 5(1)(a) and (c)⁹ of the Takeover Regulations disclosures for target companies when negotiations towards section.111 thresholds occur.</p>
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6 Regulation 4 of the Takeover Regulations.

7 S 108(h) of the Securities Act – voting shares.

8 S 2(xiii) of the Securities Act – control.

9 Regulation 5(a) and (c).

<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES, the acquisition of beneficial ownership gives rise to a disclosure obligation where such acquisition renders a person a ‘substantial shareholder’¹⁰ (holding ten per cent or more of the issued share capital or voting power) under the CA or an ‘ultimate beneficial owner (UBO)’¹¹ (holding or controlling 25 per cent or more of the shares or voting rights, or otherwise exercising effective control) under section 123A of the CA. In the case of listed companies, the Takeover Regulations further require disclosure once the ten per cent threshold is crossed. Where the beneficial owner is a foreign person, the obligation under section 123A nevertheless applies, as Pakistani companies are required to identify and report their UBOs irrespective of nationality. Such requirements constitute corporate disclosure obligations rather than capital markets disclosure.</p> <p>b. YES, any agreement or coordinated action with others to acquire shares or control triggers disclosure relying on the definition of the ‘person acting in concert’¹² under section 108(d) and Regulation 4 of the Takeover Regulations.</p> <p>c. YES. Although this departs from the narrow view that disclosure obligations are triggered only upon a direct acquisition of shares, section 110 of the SA provides otherwise and there is no exclusion/ exemption available in our law in this regard. The obligation to disclose arises upon the acquisition of voting shares, a term defined broadly to include not only equity shares carrying voting rights but also any security that entitles the holder to obtain or exercise such rights. Accordingly, transactions such as stock lending/borrowing arrangements, short positions or derivative and convertible instruments are regarded as acquisitions if and to the extent that they confer present or contingent rights to voting power or economic interests. Such transactions are therefore deemed acquisitions for the purposes of disclosure thresholds.</p>
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10 S123(A) of the Companies Act.

12 S108(d) of the Takeover Regulations – persons acting in concert.

		<p>d. YES, but only in relation to directors, executives and substantial shareholders of a listed company who must disclose their shareholdings and any changes (including gains) in writing to the company.</p> <p>e. It is our practical understanding that if a company's buyback or other corporate action causes a shareholder's percentage holding to cross the disclosure threshold without active acquisition, the shareholder is still required to disclose.</p>
5.	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Pursuant to section 123A of the CA,¹³ defines an ultimate beneficial owner as a natural person who, whether directly or indirectly, ultimately owns or exercises control over a company through at least 25 per cent of its shares, 25 per cent of its voting rights or by exercising effective control by other means.</p> <p>This definition encompasses an economic interest (ownership of 25 per cent or more of shares), the power to direct voting (25 per cent or more of voting rights) and control by other means, which may include the power to direct the holding or disposition of the securities. Accordingly, disclosure obligations are triggered where any of these thresholds or powers are present, whether held individually or jointly, directly or indirectly, making the correct answer to the query 'all of (a), (b) and (c)'.</p>

¹³ S123A of the Companies Act – Record of the ultimate beneficial owner.

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. As established in Question 4, 'persons acting in concert' refers to individuals or entities who, pursuant to a common objective, directly or indirectly and whether by formal or informal arrangement, cooperate in the acquisition of voting shares, voting rights or control of a target company.</p> <p>b. The provision provides that cooperation may arise pursuant to a formal or informal agreement. Accordingly, the existence of a written contract is not a prerequisite. 'Parallel action' may amount to acting in concert where there exists a common objective and the parties engage in direct or indirect coordination.</p> <p>Certain relationships give rise to a rebuttable presumption of acting in concert, including:</p> <ol style="list-style-type: none"> 1. companies, holding companies, subsidiaries or entities under common management or control; 2. promoters, directors or persons entrusted with the conduct of management; or 3. relatives, trustees, partnerships or private companies in which they are members or directors. <p>However, in practice, acting in concert is established by coordinated action, if parties coordinate towards the same goal, they may be considered to be acting in concert and some relationships create a default assumption of this unless successfully rebutted.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. Any acquirer who attains more than ten per cent of the voting shares in a listed company is required to disclose their aggregate shareholding, including any pre-existing holdings, to the Pakistan Stock Exchange (PSX) and the Securities and Exchange Commission of Pakistan (SECP) within two working days.</p> <p>b. YES. The disclosure must specify both the number and class of securities acquired. The takeover regime applies exclusively to voting shares of a listed company. Under Regulation 14 of the Takeover Regulations,¹⁴ an acquirer may contract for any number of voting shares; however, where the acquisition triggers section 111 of the SA, (ie, 30 per cent or more or control), the acquirer must first make a public offer for at least 50 per cent of the remaining voting shares. Any minimum acceptance condition attached to such offer cannot exceed 35 per cent of the remaining voting shares. Disclosure is therefore limited to the number of voting shares proposed to be acquired, as Regulation 14 does not extend to other instruments such as convertibles or warrants.</p> <p>c. NO.</p> <p>d. YES. The disclosure must include the date and consideration at which the securities were acquired.</p> <p>e. Acquirers are required to disclose the purpose of the acquisition, including whether they intend to assume control of the company or remain a passive investor. Such disclosure of purpose or intent must be made in the offer document or public announcement, but only in the context of a substantial acquisition or takeover.</p> <p>f. YES, but mere description of arrangements or agreement.</p> <p>g. NO.</p> <p>h. YES. Where the acquirer is acting in concert with other parties, the identities of such parties and the nature of their relationship must be disclosed.</p>
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¹⁴ Regulation 14 of the Takeover Regulation – Number of voting shares to be acquired.

<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES, if the thresholds the acquirer has to disclose and in the context of a substantial acquisition (over 30 per cent) the target also has to disclose once informed by the acquirer.</p> <p>b. YES, however, the disclosure is required to be made to the target company and, by the company in question.</p> <p>c. YES</p> <p>d. Other entities or individuals, such as trusts, nominees or intermediaries, may also have disclosure obligations depending on their involvement in shareholding or control structures.</p>
<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES. Asset managers, mutual funds, pension funds and other institutional investors are required to make disclosures where their aggregate holding reaches or exceeds ten per cent of the voting shares in a listed company, in accordance with Regulation 4 of the Takeover Regulations</p> <p>Short-form disclosure is not permissible. Such investors are obliged to furnish the same level of disclosure as any other acquirer or shareholder, including particulars of the number and class of shares held, the percentage of shareholding and details of the acquisition.</p> <p>b. The obligation to disclose arises upon acquisition of beneficial ownership or voting rights amounting to ten per cent or more of a listed company's share capital, irrespective of the investor's strategy or intent. Any person, including passive investors, holding such interest qualifies as a 'substantial shareholder'¹⁵ under SA and is required to submit Form 2 within two working days under 101(2) of the SA. No exemption or abridged disclosure mechanism is available for passive investors.</p> <p>c. N/A. Even if a transaction is exempted from the MTO regime (see below 12(e)), disclosures for any acquisition made pursuant to the exempted transaction, regardless of cross any threshold (even below ten per cent, above ten per cent and above 30 per cent or 5one per cent) regardless of the time, is required to be made within two working days of the acquisition.</p>

15 S 2 of the SA – substantial shareholder

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES.</p> <p>b. Any acquisition beyond the initial ten per cent threshold must be disclosed within two working days in the specified form, but there is no obligation to revise that disclosure for further acquisitions made within the same 12-month period. However, acquisitions made after 12 months require a fresh disclosure in the relevant form. The framework is entirely event-driven, with each new acquisition treated as a separate occurrence that independently gives rise to a disclosure requirement.^{16 17}</p> <p>Acquisition of shares within a period of 12 months from a public offer does not trigger a mandatory public offer requirement if the acquirer's stake remains below 51 per cent. This means that beyond 30 per cent, once a public offer has been made, further stake building is allowed without a fresh public offer within a 12-month period so long as the acquirer does not cross 51 per cent ownership stake in the target.</p> <p>c. N/A. There is no trigger with change of intent/purpose.</p> <p>d. The obligation to make a mandatory tender offer (MTO) arises if an acquirer, together with persons acting in concert, will hold 30 per cent or more of the voting shares in a listed company. In such case, no further acquisitions can be made that will cross the 30 per cent threshold unless the acquirer first makes a public announcement of an offer to purchase shares from the remaining shareholders and this process is governed by the Takeover Regulations.¹⁸</p>
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16 Securities Act, 2015 (s110(3)).

17 Takeover Regulations, 2017 (Regulation 4(2), Schedules III – IV).

18 Securities Act, 2015 – s111(1), Takeover Regulations, 2017 – Regulation 6(1), Securities Act, 2015 – s110, Takeover Regulations, 2017 – Regulation 4, Takeover Regulations, 2017 – Regulation 5(1)(a), Securities Act, 2015 – s111(1).

		<p>e. The Takeover Regulations, 2017, establish an event-driven disclosure regime, requiring fresh filings for acquisitions (Schedules II–IV), further acquisitions after 12 months, firm intentions to acquire control, unusual market activity and the announcement or execution of a tender offer.¹⁹ For the initial ten per cent threshold the disclosure period is two working days of the acquisition.</p> <p>f. No acquisition is allowed beyond the 30 per cent threshold. If an acquirer already holds 30 per cent but below 51 per cent, then any acquisition can result in an increase in stake without the acquirer first making a public offer. The only exception is that stake building is allowed within a period of 12 months from the period public offer if the acquirer’s stake remains between 30 per cent and 51 per cent.</p>
11.	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO, the SA does not prescribe criminal liability for failure to disclose substantial acquisition of voting shares. The sanctions are administrative/regulatory in nature.</p> <p>b. The SECP is empowered to impose regulatory sanctions for breaches of stake disclosure obligations. Notably, in the first half of the 2024– 2025²⁰ financial year, the Commission issued five orders against companies for failing to disclose substantial acquisitions of voting shares in listed entities.</p> <p>c. NO</p> <p>d. NO</p> <p>e. NO, only the SECP, that is the regulator has the authority to enforce disclosure requirements along with assessing penalties under the SA as well as the Takeovers Regulations. There is no statutory private right of action to sue for such violation.</p>

19 Takeover Regulations, 2017 (Regulations 4, 5(1), 6 – 7; Schedules II – IV).

20 www.secp.gov.pk/wp-content/uploads/2024/02/Press-Release-Feb-9-SECP-takes-actions-against-violators-of-law.pdf accessed 23 March 2026

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES.</p> <p>b. YES, The MTO threshold is 30 per cent or more voting shares in a listed company.</p> <p>c. Only voting shares (equity shares carrying voting rights) triggers of a listed company.</p> <p>d. MTO obligation is triggered in the following circumstances:</p> <ol style="list-style-type: none"> 1. Direct acquisition: an acquirer whose shareholding in a listed company exceeds 30 per cent of the voting shares is required to make an MTO. 2. Indirect acquisition: an acquirer who obtains control of an entity that itself holds more than 30 per cent of the voting shares in a listed company becomes subject to the MTO regime. 3. Concert party arrangements: where persons acting in concert collectively cross the 30 per cent threshold, the obligation to make an MTO is similarly engaged. 4. Acquisition of control by other means: the MTO requirement also arises where a person acquires 'control' of a listed company, even absent a direct share transfer, including the ability to appoint a majority of directors or otherwise influence policy or management decisions. <p>e. The following transactions are exempt from the MTO regime but disclosures are nevertheless required within two working days of each acquisition that falls within the category of the following exempted transactions:</p> <ol style="list-style-type: none"> 1. allotment of voting shares pursuant to a right issue to existing members of a company in proportion to their shareholding, except voting shares allotted and issued under sub-section (7) of section 86 of the Companies Ordinance, 1984 (XLVII of 1984); 2. allotment of voting shares to the licensed underwriters pursuant to any underwriting agreement;
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		<ol style="list-style-type: none"> 3. acquisition of voting shares in the ordinary course of business by banks and financial institutions as enforcement of security; 4. acquisition of voting shares by succession or inheritance; 5. a scheme of arrangement or reconstruction including amalgamation or merger or demerger under any law for the time being in force; 6. exercise of option by a bank or a financial institution in pursuance of a conversion option under a loan agreement; 7. sale of shares in consequence of privatisation of a unit or its management rights within the meaning of Privatisation Commission Ordinance, 2000 (LII of 2000); and 8. acquisition pursuant to inter se transfer of shares among qualifying persons, being: <ol style="list-style-type: none"> (i) relatives; (ii) persons named as promoters or sponsors in the memorandum of association of target company holding not less than 25 per cent of the equity securities of the target company; (iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company; and (iv) major shareholders of a target company collectively exercising management control for a continuous period of three years prior to the proposed acquisition; For the purposes of this clause the expression 'major shareholder' means person directly holding more than 20 per cent of voting shares of the target company; (1) a scheme of rehabilitation of a company approved under any law for the time being in force.
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		<p>f. In the event that an MTO is not initiated or completed, section 126 of the SA21 empowers the SECP to impose the following sanctions:</p> <ol style="list-style-type: none"> 1. Debarment: The acquirer and any person acting in concert may be prohibited from acquiring voting shares in any listed company for a period of up to three years. 2. Disqualification: Any director or member of the management of the target company may be disqualified from holding office in any listed company for a period of two years. 3. Monetary penalty: The SECP may impose a financial penalty of up to PKR 100m.
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <ol style="list-style-type: none"> a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)? b. Can MTO be subject to conditions? c. Consideration to shareholders: only in cash? d. Other 	<p>a. YES. Restrictions on formal bid pricing are established under the Takeover Regulations. Regulation 1322 stipulates that, for frequently traded shares, the minimum offer price shall be determined as the highest of specified benchmarks:</p> <ol style="list-style-type: none"> 1. the negotiated weighted average price as per the share purchase agreement; 2. the highest price paid by the acquirer within the preceding six months of the public announcement date; 3. the weighted average market price over the last 180 days preceding the date of the public announcement of offer; 4. the weighted average share price of the target during the 28 days preceding the date of public announcement of intention; and 5. the net asset value calculated by a chartered accountant using audited financials not older than six months.

21 S126 of the Securities Act – Penalties for non-compliance.

22 Regulation 13 of the Takeover Regulations – Minimum offer price.

		<p>Regulation 17(5)²³ introduces a post-bid restriction by permitting only upward revisions in price and number of shares in the event of a competitive bid, while Regulation 19²⁴ restricts the permissible form of consideration to cash, listed equity, listed debt, convertible debt, government securities or a combination thereof, with securities to be valued at the 90-day average closing price, thereby mitigating potential pricing manipulation.</p> <p>b. An MTO may indeed be subject to conditions, but such conditions are limited by the takeover framework. Specifically, the offer may be conditional upon a minimum level of acceptances (not exceeding 35 per cent of the remaining voting shares).</p> <p>c. NO, consideration is not limited to cash relying on the Regulation 19 of the Takeover Regulation. The acquirer may offer cash, securities (equity or debt), government securities or a combination thereof, provided regulatory conditions are met.</p>
14.	<p>Is there a ‘put up or shut up’ mechanism in your jurisdiction?</p>	<p>Public announcement of intention: Once an acquirer announces an intention to acquire shares or control, it must proceed to a formal public announcement of offer and follow the strict timetable under Schedule IX (with fixed deadlines for book closure, issuance of offer letters, acceptance, closure etc). Withdrawal of public announcement of intention is allowed (and there is no restriction on making a further public announcement of intention after a withdrawal) in the following circumstances:</p> <ul style="list-style-type: none"> • natural person acquirer: death, bankruptcy or unsound mind. • negotiations fail: deal talks collapse; • unfavourable due diligence: results justify exit.

23 Regulation 17(5) of the Takeover Regulations – Upon the public announcement of a competitive bid, the acquirer, who has made a public announcement of the earlier offer, shall have the option to make another announcement: (a) revising the public offer in respect of the price and the number of voting shares to be acquired without changing any other terms and conditions of the said public offer; or (b) withdrawing the public offer: Provided that if no such announcement is made within the time lines prescribed with reference to competitive bids and upward revision, the earlier offer on the original terms shall continue to be valid and binding on the acquirer who has made the earlier public offer, except that the date of closing of such public offer shall stand extended to the date of closure of public offer under the last subsisting competitive bid(s).

24 Regulation 19 of the Takeover Regulation – Mode of payment.

<p>14.</p>		<ul style="list-style-type: none"> • corporate acquirer: liquidation or board resolution not to proceed. • time lapse: deadline (including extension) expires. • regulated entity: required regulatory approvals not granted. <p>Withdrawal restrictions: A public announcement of offer, once made, cannot generally be withdrawn except in very limited circumstances (eg, liquidation, bankruptcy and insolvency). If withdrawn, any shares or control already acquired must be reversed, restoring the status quo.</p> <p>Cooling-off effect: Because withdrawal is tightly constrained and the acquirer is bound to proceed once an offer has been announced, the regime prevents prolonged 'wait and see' scenarios. In practice, this works as Pakistan's version of a put up or shut up mechanism forcing the bidder either to move forward with the offer or abandon it under narrow grounds.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Portugal

	Which jurisdiction are you covering?	Portugal
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	The disclosure obligation will be triggered whenever the relevant shareholding thresholds of five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 33.33 per cent, 50 per cent, 66.67 per cent and 90 per cent have been reached or crossed or reduced to a value lower than any of the above thresholds in a Portuguese company whose shares are admitted to trading on an EU regulated market (Article 16/1 of the Portuguese Securities Code or PSC).
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. The shareholder should inform the Securities and Exchange Commission (Comissão do Mercado de Valores Mobiliários or CMVM) and the issuer. This notification should be made as soon as possible and, in any case, no later than four trading days counted from the completion of the transaction, that is when the relevant thresholds have been reached or crossed, (or of knowledge thereof) (Article 16/1, 3/a) and 17/1 of the PSC). The shareholder is considered to have deemed knowledge of the fact requiring disclosure two trading days of the occurrence of such fact. Upon receipt of the disclosure notice from the shareholder, the issuer shall disclose such information to the market as soon as possible upon receipt of the notice from the shareholder and in any event within three trading days (Article 16/1, 3/a) and 17/1 of the PSC).</p> <p>b. NOTIFICATION both to the issuer and the CMVM should follow the standard form, made available by ESMA. The submission of the form to the CMVM must be made through its Electronic One-Stop Shop ('BUE'). Additionally, the submission of the form to the issuer should be made through written communication or email (Article 13-B/4 PSC).</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES. No specific time limit is required, provided they grant an unconditional or discretionary right to acquire (Article 20/1/e) of the PSC)</p> <p>d. YES</p> <p>e. YES</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. USUALLY NO</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. YES. Economic exposure equivalent to holding shares is included, even without direct ownership (eg, financial instruments indexed to shares).</p> <p>b. YES</p> <p>c. YES</p> <p>d. NO</p> <p>e. YES</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. Any agreement with the participant that aims either at acquiring control of the company or at preventing any changes to its control or otherwise constituting an instrument for concertedly exercising influence over the company in which the participating interest is held.</p> <p>b. A formal agreement is not required; coordinated parallel actions are sufficient to qualify as acting in concert. We note this is a grey area with a lot of discussion with the regulator.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p> <p>f. YES</p> <p>g. NO</p> <p>h. YES</p> <p>i. Details of holding per class of shares and the voting rights attributed.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES. Money/asset managers must disclose positions when crossing thresholds, but may use a simplified regime if acting independently and without influence over management.</p> <p>b. YES. General rules must apply, no specific short form.</p> <p>c.</p> <ol style="list-style-type: none"> 1. Holdings resulting from transactions involving members of the European System of Central Banks (ESCB), acting as monetary authorities within either the scope of assurance and repurchase agreements or any similar liquidity agreement authorised for monetary policy reasons or within the scope of a payments system, provided that the transactions are carried out in a short timeframe and on the condition that the respective share voting rights are not exercised; 2. shares that are exclusively transacted for clearing and settlement purposes within the usual and short settlement cycles with a maximum duration of three trading days as from the transaction date; 3. shares held by custodian entities provided they only exercise the voting rights of those shares or instruments as per the holder's written instructions; and 4. the shares purchased for the purposes of stabilisation pursuant to Commission Regulation (EC) No 2283/2003 of 22 December 2003, regarding exemptions for buy-back programmes and financial instrument stabilisation, provided that the share voting rights are neither exercised nor applied to intervene in the management of the issuer.

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. Disclosure statement shall be reviewed/new disclosure is necessary in case a new threshold is reached or if there are relevant changes in the holding chain (eg, if there is a new vehicle or beneficial owner within a group relationship).</p> <p>b. Any change crossing one of the legal thresholds.</p> <p>c. NO separate obligation if intent changes without a change in holding.</p> <p>d. Changes due to relevant changes in the holding chain (eg, if there is a new vehicle or beneficial owner within a group relationship).</p> <p>e. This notification should be made as soon as possible and, in any case, no later than four trading days counted from the completion of the transaction, that is when the relevant thresholds have been reached or crossed, (or of knowledge thereof) (Article 16/1, 3/a) and 17/1 of the PSC). The shareholder is considered to have deemed knowledge of the fact requiring disclosure two trading days of the occurrence of such fact. Upon receipt of the disclosure notice from the shareholder, the issuer shall disclose such information to the market as soon as possible upon receipt of the notice from the shareholder and in any event within three trading days (Articles 16/1, 3/a and 17/1 of the PSC).</p> <p>f. NO legal moratorium after disclosure.</p> <p>Disclosure statements shall be reviewed/new disclosure is necessary in case a new threshold is reached or if there are relevant changes in the holding chain (eg, if there is a new vehicle or beneficial owner within a group relationship).</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES. Violation of stake disclosure requirements constitutes a very serious offense (<i>contraordenação muito grave</i>), with applicable fines ranging from €25,000 to €5m (Articles 388 and 399 of the PSC).</p> <p>c. YES. Civil liability for losses caused to third parties (Article 304-A of the PSC).</p> <p>d. YES. Suspension of voting and financial rights until disclosure is made (Article 16-A/4 of the PSC).</p> <p>e. YES. Retail investors hold the right to class action and may bring civil claims for damages (Article 31 and 32 of the PSC).</p>
<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES</p> <p>When reaching or surpassing directly or indirectly, one-third or 50 per cent of the voting rights corresponding to the share capital (Article 187 of the PSC).</p> <p>c. Acquisition of shares or securities conferring the right to their subscription or acquisition issued by a company whose shares are admitted to trading on a regulated market in Portugal (Article 173 of the PSC).</p> <p>d. According to Articles 20 and 187 of the PSC:</p> <ul style="list-style-type: none"> • direct or indirect acquisition of shares, including by way of agreements, concerted actions and so on • voting by exercise of derivative instruments; and • passive fulfilment of thresholds. <p>e. YES (Articles 187 (2) and 189 of the PSC)</p> <p>When there is no dominant influence on the target company and from the:</p>

		<ol style="list-style-type: none"> 1. acquisition of securities because of a public takeover bid launched for issued by the target company, without any restriction regarding the maximum quantity or percentage of securities to be acquired, assessed with reference to the six months immediately prior to the date of publication of the preliminary announcement of that public takeover bid; 2. implementation of measures aimed at the recovery of a company in financial distress, within the framework of any of the recovery or restructuring mechanisms provided for by law, including resolution measures and the exercise of resolution powers or the reduction or conversion of own funds instruments; 3. merger of companies, provided that the general meeting resolution expressly states that the merger will result in a new controlling position; and 4. acquisition of securities by inheritance or legacy, provided that the company's articles of association foresee the relevant transfer situations for this purpose. <p>f. Regulatory sanctions and civil sanctions.</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <ol style="list-style-type: none"> a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)? b. Can MTO be subject to conditions? c. Consideration to shareholders: only in cash? d. Other 	<ol style="list-style-type: none"> a. YES The consideration of a mandatory takeover bid may not be less than the higher of the highest price paid by the offeror (or related parties) in the six months prior to the preliminary announcement and the weighted average price on a regulated market in the same period. If these criteria are not applicable or the CMVM considers the bid to be unfair, a fixed independent expert the minimum value. The consideration can be in the form of cash or securities, as long as it fulfils liquidity and equivalence criteria and is publicly disclosed with transparency (Article 188 of the PSC). b. YES, but only legally required (eg, competition or regulatory clearance) (Article 176 of the PSC). c. NO. It can be in cash, securities or mixed (if certain conditions are met, according to Articles 177 and 188 of the PSC).

14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	Although there are no express 'put up or shut up' rules in Portugal, the CMVM has previously made potential bidders (and potential competing bidders) disclose their intentions to the market (Article 187(2) and 194 of the PSC).
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for People’s Republic of China

	Which jurisdiction are you covering?	People’s Republic of China
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Pursuant to the Takeover Code (the Administrative Measures on Takeovers of Listed Companies promulgated by China Securities Regulatory Commission (CSRC)), where an investor (including aggregated parties acting in concert) hits or crosses the initial five per cent (or ten per cent or 15 per cent) shareholding line, it’ll need to file and disclose a simple form shareholding change report within three trading days.</p> <p>Any further increase or reduction of shareholding in such listed company by one per cent or more will require a simple disclosure (as opposed to the said report) on the next trading day.</p> <p>Where an investor hits or crosses the 20 per cent or 25 per cent shareholding line or hits the 30 per cent shareholding line, it will need to file and disclose a detailed form shareholding change report within three trading days.</p> <p>Where an investor is acquiring shares in a listed company resulting in it holding more than 30 per cent, it will need to launch a general offer or a partial offer, and prepare and publish a report of takeover by way of tender offer.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	See the answer to Question 1.

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. Presumably, YES. The Takeover Code uses the general term of 'issued shares', without differentiating non-voting shares from voting shares.</p> <p>c. YES for securities convertible into shares of listed companies pursuant to Article 85 of the Takeover Code.</p> <p>d. NO. Total return swaps (TRS) or similar transactional arrangements, as a practical matter, are not allowed by CSRC in the first place.</p> <p>e. NO</p> <p>f. NO</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Any of a, b or c.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>Acting in concert refers to behaviours or scenarios where investors, via contractual or other arrangements, increase the voting rights in a listed company that it may control in concert with other investors.</p> <p>It does not have to be a formal agreement. However, parallel action does not necessarily give rise to acting in concert.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>All of the said information is expected to be included or clarified in the said shareholding change report or takeover report.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	Yes to a, b and c
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES. No short form in this case.</p> <p>b. YES. No short form in this case.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>The report is supposed to be true. If any major information in a past report turns out to be incorrect, the party will need to, as a general principle, to promptly make rectification or clarification disclosure via the listed company.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. According to Article 161 of the PRC Criminal Law, where a company or an enterprise with information disclosure obligations in accordance with law provides its shareholders and the public with a financial accounting report which is false or conceals any material fact, or fails to disclose according to applicable regulations any other important information that shall be disclosed in accordance with law, causing serious damage to the interests of shareholders or any other person or with any other serious circumstance, its directly liable executive in charge and other directly liable persons shall each be sentenced to imprisonment of not more than five years or limited incarceration and a fine or be sentenced to a fine only; or if the circumstances are especially serious, shall each be sentenced to imprisonment of not less than five years nor more than ten years and a fine.</p> <p>The controlling shareholder or actual controller of a company or an enterprise set forth in the preceding paragraph who commits or organises or instigates the commission of the conduct in the preceding paragraph or conceals the relevant matter, resulting in the occurrence of the circumstance set forth in the preceding paragraph, shall be punished in accordance with the provision of the preceding paragraph.</p> <p>Where the controlling shareholder or actual controller committing a crime provided for in the preceding paragraph is an entity, the entity shall be sentenced to a fine, and its directly liable executive in charge and other directly liable persons shall be punished according to the provision of first paragraph of this article.</p> <p>b. Article 75 of the Takeover Code provides that where any information disclosure obligor for the takeover of a listed company and for the relevant shareholding change fails to perform the reporting, notification or any other relevant obligation according to the Takeover Code, CSRC shall order it or them to make corrections, and adopt such supervisory measures as supervisory talks, issuance of warning letters, ordering to suspend or stop the takeover. Before the correction, the relevant information disclosure obligor shall not exercise the voting rights of the shares it holds or actually controls.</p>
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		<p>According to Article 76, where any information disclosure obligor for the takeover of any listed company and for the relevant shareholding change has any false record, misleading statement or major omission in the report or announcement it has made, CSRC shall order it or them to make corrections, and adopt such supervisory measures as supervisory talks, issuance of warning letters, ordering it to suspend or stop the takeover. Before the correction, the relevant information disclosure obligor shall not exercise the voting rights of the shares it holds or actually controls.</p> <p>c. c & e: Article 85 of the PRC Securities Law, where any persons with information disclosure obligations fail to disclose information according to applicable regulations, or there are any false or misleading statements or material omissions in the information disclosure materials, causing loss to investors in securities trading, the persons with information disclosure obligations shall be liable for damages.</p> <p>d. See the answer to b, where voting rights will be suspended.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. 30 per cent.</p> <p>c. Shares.</p> <p>d. Direct acquisition or indirect acquisition (alone or acting in concert) of shares in a listed company what will result in the investor owning 30 per cent or more shares in a listed company.</p> <p>e. YES. Article 62 of the Takeover Code provides for exceptions, including: (1) an intra-group share transfer without resulting in a change of control of the listed company; (2) an investor's bail-out restructuring of a listed company in severe financial difficulty and such investor undertaking not to transfer its interest in the listed company within the next three years; and (3) any other scenarios that CSRC deems necessary for accommodating the development and changes of securities market or protection of investors' legitimate interests.</p> <p>Article 63 further provides that under any of the following circumstances, an investor may be exempt from making a tender offer:</p> <ol style="list-style-type: none"> 1. the proportion of shares held by the investor in a listed company exceeds 30 per cent of the issued shares of the listed company as a result of the gratuitous transfer, modification or combination of state-owned assets with the approval of state assets regulator; 2. the proportion of shares held by the investor in a listed company exceeds 30 per cent of the issued shares of the company as a result of capital stock reduction due to the repurchase of shares by the listed company from specific shareholders at a determined price approved by the shareholders' meeting;
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		<ol style="list-style-type: none"> 3. the investor obtains new shares issued to it by a listed company with the approval of the non-affiliated shareholders at the shareholders' meeting of the listed company, which causes the proportion of shares held by the investor in the company to exceed 30 per cent of the issued shares of the company, the investor undertakes not to transfer the new shares issued to it in the future three years, and it is agreed at the shareholders' meeting of the company that the investor is exempt from making a tender offer; 4. the proportion of shares held by the investor in a listed company reaches or exceeds 30 per cent of the issued shares of the company, and the investor will increase its shareholding during each period of 12 months one year after the occurrence of the said fact by not more than two per cent of the issued shares of the company; 5. the proportion of shares held by the investor in a listed company reaches or exceeds 50 per cent of the issued shares of the company, and the investor's continuing to increase its equity in the company will not affect the listing status of the company; 6. a securities company, bank, or any other financial institution holds more than 30 per cent of the issued shares of a listed company as a result of legally engaging in underwriting, lending, or other business within its business scope, but has neither act nor intent to actually control the company and has proposed a solution to transfer the relevant shares to the non-affiliates during a reasonable period; 7. the proportion of shares held by the investor in a listed company exceeds 30 per cent of the issued shares of the company as a result of succession;
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		<p>8. the proportion of shares held by the investor in a listed company exceeds 30 per cent of the issued shares of the company as a result of repurchase of the shares of the listed company to fulfil a securities repurchase agreement, and the investor can prove that the voting rights of the repurchased shares are not transferred during the term of the agreement;</p> <p>9. the proportion of shares held by the investor in a listed company exceeds 30 per cent of the issued shares of the company as a result of recovery of the voting rights of the preferred shares held by the investor; and</p> <p>10. other circumstances as determined by CSRC for adaptation to the development and changes of the securities market or for protection of the lawful interests of investors.</p> <p>f. According to Article 78 of the Takeover Code, where the purchaser conducts a takeover by tender offer without performing the relevant obligations or the corresponding procedures in accordance with the Takeover Code, or refuses to perform the relevant obligations or the corresponding procedures in the case of non-conformity with the circumstances for exemption from making a tender offer as specified by the Takeover Code, CSRC shall order the purchaser to take corrective action, and take regulatory measures such as holding regulatory interviews, issuing a letter of caution, and ordering suspension or cessation of takeover. Before taking corrective action, the purchaser may not exercise the voting rights of the shares held or controlled by it.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. May not be lower than the highest price at which the purchaser obtains the said kind of shares within six months before the suggestive announcement on tender offer is made.</p> <p>b. YES, customary and fair conditions, for example, minimum acceptance level, corporate or regulatory approvals.</p> <p>c. Cash, securities or combination of cash/securities. Where the consideration securities are not listed and traded on stock exchange, cash alternative should be offered.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>No</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Singapore

	Which jurisdiction are you covering?	Singapore
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Under the Securities and Futures Act 2001 of Singapore (SFA), a substantial shareholder (or a person who has ceased to be a substantial shareholder) must give written notice to the corporation of interests, or changes in interests, in the voting shares in the company.</p> <p>A 'substantial shareholder' is a shareholder who has an interest or interests in one or more voting shares (excluding treasury shares) in the company and the total votes attached to that share, or those shares, is not less than five per cent of the total votes attached to all voting shares (excluding treasury shares) in the company.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Under the SFA, a substantial shareholder must notify the company within two business days after becoming aware that: (1) they have become a substantial shareholder; (2) they have ceased to be a substantial shareholder; or (3) there has been a change in the percentage level²⁵ of their interest in the voting shares of the listed company. A listed company is required to disseminate the disclosure or change in interest to the organised market as soon as practicable and in any case, no later than the end of the business day following the day on which the listed company received the notice.</p>

25 'Percentage level' means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to: (1) all the voting shares (excluding treasury shares) in the corporation; or (2) where the share capital of the corporation is divided in two or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned, and if it is not a whole number, rounding that figure down to the next whole number.

		<p>b. For companies listed on the Singapore Exchange Securities Trading Limited (SGX-ST), a substantial shareholder should provide the notification using only the notification forms prescribed by the Monetary Authority of Singapore (MAS) (Form 3 for initial disclosure, Form C for changes) which must be submitted to the listed company. A listed company is required to disseminate the notification received using the prescribed form (Form 7), which is available as an announcement template on SGXNET.</p>
3.	<p>What type of instruments/securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO. Only interests in voting shares are relevant for substantial shareholder disclosure.</p> <p>c. YES, if the derivative instrument confers a right to acquire an interest in voting shares. The instruments do not need to be exercisable or convertible within a time period.</p> <p>d. NO, unless they confer a right to acquire an interest in voting shares.</p> <p>e. YES</p> <p>f. Save for the interests set out under section 4(10)²⁶ of the SFA, any interest in securities or securities-based derivatives contracts that confers voting rights in a company will count towards the disclosure level/threshold.</p>

26 Such interests include an interest of: (1) a person who holds the security as bare trustee; (2) a person whose ordinary business includes the lending of money or who holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; (3) a person who holds the interest by reason of holding a prescribed office; (4) a company in its own securities if that interest is acquired in accordance with the Companies Act 1967, Singapore; (5) a person in such class of persons as may be prescribed under the SFA; or (6) a person where the obligations of the securities-based derivatives contract are to be discharged at some future time by cash settlement only.

<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES, if it results in a change in the percentage level of the interest (upwards or downwards) in voting shares.</p> <p>d. YES, if it results in a change in the percentage level of the interest (upwards or downwards) in voting shares.</p> <p>e. YES, if it results in a change in the percentage level of the interest (upwards or downwards) in voting shares.</p> <p>f. Any event that results in a change in the percentage level of the interest (upwards or downwards) in voting shares will trigger the disclosure requirements under the SFA.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. NO</p> <p>b. YES</p> <p>c. YES</p> <p>d. NO. A person is not deemed interested in the securities in question if the person only owns a pure economic interest in the securities without the power to control the voting or disposal of the securities in question.</p> <p>e. N/A.</p> <p>f. N/A.</p> <p>Under the SFA, a person is deemed interested in securities or securities-based derivatives contracts if: (1) the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities or securities-based derivatives contracts, as the case may be; or (2) the person is entitled, otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a company or of a class of its members, to exercise or control the exercise of the voting rights attached to those securities or securities-based derivatives contracts.</p>

6.	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>Persons acting in concert comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company. As such, an informal understanding is sufficient to constitute acting in concert.</p> <p>In addition, individuals and companies with certain relationships to each other (eg, a company and its directors) are presumed to be acting in concert unless the contrary is established.</p>
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES. If the acquisition of securities leads to a public takeover transaction, the holdings of the acquirer and its concert parties in the relevant securities of the target company must be publicly disclosed in the transaction announcement. Subsequent acquisitions of relevant securities by the acquirer and its concert parties must also be publicly disclosed on an ongoing basis until the conclusion of the transaction.</p> <p>b. YES. The relevant securities to be disclosed includes the securities which are being offered for or which carry voting rights, and convertible securities, warrants, options and derivatives in respect of the securities which are being offered for or which carry voting rights.</p> <p>c. NO for the disclosures described in paragraph (a) above. However, the transaction announcement for a public takeover must include an unconditional confirmation by the financial adviser or an appropriate third party that the acquirer has sufficient resources to complete the transaction, if the transaction consideration is cash or involves an element of cash.</p>

		<p>d. YES. If the acquirer and/or its concert parties have dealt for value in the shares of the target company during the period: (1) commencing from the date that is six months, in the case of a mandatory takeover, or three months, in the case of a voluntary takeover, prior to the transaction announcement; and (2) ending with the latest practicable date prior to the posting of the formal public takeover document (eg, offer document or scheme document), then the details, including dates and prices, must be stated in the formal public takeover document. If no such deals have been made, this fact should be stated in the formal public takeover document.</p> <p>e. NO. A transaction announcement is typically required only if the acquisition of securities leads to a public takeover transaction. However, announcements may be required prior to the transaction announcement, if there is rumour or speculation or undue movement in the target company's share price and volume.</p> <p>If the acquisition of securities leads to a public takeover transaction, the acquirer should include the following in the formal public takeover document:</p> <ol style="list-style-type: none"> 1. its intentions regarding the business of the target company; 2. its intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the target company; 3. the long-term commercial justification for the proposed offer; and 4. its intentions with regard to the continued employment of the employees of the target company and of its subsidiaries.
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8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. See the response to Question 5.</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES, if the money/asset managers have an interest in the voting shares within the definition of section 4(1) of the SFA. All investors are required to file the same disclosure form.</p> <p>b. N/A as there is no equivalent concept of 'passive investors' in Singapore. All investors are required to file the same disclosure form.</p> <p>c. Save for the persons holding interests as set out under section 4(10)27 of the SFA, any interest in securities or securities-based derivatives contracts that confers voting rights in a company will count towards the disclosure level/threshold. All investors are required to file the same disclosure form.</p>

27 Such interests include, among others, an interest of: (1) a person who holds the security or securities-based derivative contract as bare trustee; (2) a person whose ordinary business includes the lending of money or who holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; (3) a person who holds the interest by reason of holding a prescribed office; (4) a company in its own securities if that interest is acquired in accordance with the Companies Act 1967, Singapore; (5) a person in such class of persons as may be prescribed under the SFA; or (6) a person where the obligations of the securities-based derivatives contract are to be discharged at some future time by cash settlement only.

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. Each change in the percentage level of the interest (upwards or downwards) in voting shares triggers an obligation to disclose such change.</p> <p>c. N/A. A change in intent/purpose does not trigger an obligation to disclose.</p> <p>d. Any event resulting in a change in the percentage level of the interest (upwards or downwards) in voting shares.</p> <p>e. Within two business days after the substantial shareholder becoming aware of the change.</p> <p>f. NO</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES. Any intentional or reckless violation, or any knowing or reckless provision of false or misleading information in purported compliance with, the stake disclosure requirements under the SFA is a criminal offence, punishable by fines and/or imprisonment.</p> <p>b. YES. The MAS may bring an action in court against a substantial shareholder to seek an order for a civil penalty.</p> <p>c. NO</p> <p>d. YES. The court, on application of the MAS, may make one or more of the orders set out in section 137E of the SFA²⁸ against a substantial shareholder.</p> <p>e. NO. Only the MAS has the power to enforce these rules.</p>
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28 Such orders include: (1) an order restraining the person from disposing of any interest in shares in the company; (2) an order restraining the exercise of any voting or other rights attached to any share in which the person has or has had an interest; (3) an order directing the company not to make payment or defer making payment of any sum due from the company in respect of any share in which the person has or has had an interest; (4) an order directing the sale of any shares in the company held by the person; (5) an order directing the company and/or the Central Depository System not to register the transfer of shares; (6) an order directing that any exercise of voting or other rights attached to shares in the company held by the person be disregarded; or (7) an order directing the company or any other person to do or refrain from doing an act specified by the court for the purposes of securing compliance with any other order made by the court.

<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. An MTO is triggered when either:</p> <ol style="list-style-type: none"> 1. a person acquires, whether by a series of transactions over a period of time or not, shares which, taken together with shares held or acquired by persons acting in concert with it, carry 30 per cent or more of the voting rights of the target company; or 2. a person, together with persons acting in concert with it, holds not less than 30 per cent but not more than 50 per cent of the target company's voting rights, and such person, or any person acting in concert with it, acquires additional shares carrying more than one per cent of the target company's voting rights in any rolling six-month period. <p>c. An MTO is triggered by the acquisition of shares which carry voting rights. The acquisition of voting rights or general control of them, as distinct from the shares themselves, would also be deemed to be the acquisition of such shares, though this would not normally apply in the case of a bank taking security over shares in the normal course of its business.</p> <p>In general, the acquisition of instruments convertible into, rights to subscribe for and options in respect of new shares which carry voting rights does not give rise to an MTO. However, the exercise of any conversion or subscription rights or options will be considered to be an acquisition of voting rights, which may trigger an MTO.</p> <p>d. Generally, transactions which result in the thresholds set out in paragraph (b) above being crossed will trigger an MTO. These transactions include:</p> <ol style="list-style-type: none"> 1. in the situation where a company holds a controlling interest in another company, the acquisition of statutory control over the first company may lead to the acquirer also obtaining effective control over the second company. In such a situation, the acquisition of the first company may trigger an MTO for the second company;
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		<ol style="list-style-type: none"> 2. in a situation where an upstream company distributes, on a pro-rata basis, its shareholdings in a downstream company to shareholders of the upstream company, an upstream shareholder who obtains effective control over the downstream company may be required to make an MTO for the downstream company; 3. the exercise of conversion or subscription rights or options; and 4. the borrowing of shares in a securities borrowing and lending transaction, unless the borrower can show that he cannot exercise, direct or influence the exercise of such voting rights. <p>e. YES, exceptions are available in certain specific situations. One example is the whitewash waiver, which may be available in the situation where an MTO would otherwise arise as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities.</p> <p>f. If the Securities Industry Council (the 'Council') finds that there has been a breach of the Singapore Code on Take-overs and Mergers (the 'Code'), it may have recourse to private reprimand or public censure or, in a flagrant case, to further action as the Council thinks fit, including actions designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market. In the case of advisers, the Council may also require such adviser to abstain from taking on Code-related work for a stated period. If the Council finds evidence to show that a criminal offence has taken place whether under the Companies Act, the Securities and Futures Act or under the criminal law, it will refer the matter to the appropriate authority.</p>
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		<p>Where a person has breached the Code, the Council may also make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the target company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant rule in the Code had been complied with. In addition, the Council may make a ruling requiring simple or compound interest to be paid at a rate and for a period to be determined, including any period prior to the date of the ruling and until full payment is made</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. An MTO must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the acquirer or any of its concert parties for the voting rights of the target company during the offer period and within six months prior to its commencement.</p> <p>If an acquirer or any of its concert parties buys securities in the target company at above the offer price, it must increase its offer to not less than the highest price paid for such securities.</p> <p>b. YES. An MTO must be conditional only upon the acquirer having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the acquirer and its concert parties holding more than 50 per cent of the voting rights. Except with the Council's consent, no other conditions are permitted.</p> <p>c. YES, see paragraph (a) above. When voting rights have been acquired for a consideration other than cash, the MTO must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.</p>

<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>Currently, where an announcement of a firm intention to make an offer is premature or inappropriate, a holding announcement may be made in accordance with the Code. Subsequently, monthly updates on the progress of such talks are required until a firm intention to make an offer or a decision not to proceed with an offer is announced in accordance with the Code. The Code, however, does not provide a deadline for when the potential offeror must clarify its intentions.</p> <p>As a codification of its current practice, the Council is proposing to amend the Code such that where a potential offeror has made a holding announcement about a possible offer and has not clarified its intentions for a prolonged period, it would be given a 28-day deadline to clarify its intentions by announcing a firm offer or stating that it would not be making an offer. If an indicative offer price is disclosed prior to a firm offer, the firm offer must be at no less than such indicative price.</p>
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for South Africa

	Which jurisdiction are you covering?	South Africa
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Our major shareholding disclosure obligations are prescribed in the South African Companies Act, No 71 of 2008 (the 'Companies Act'), the Takeover Regulations promulgated thereunder and the listings requirements of the Johannesburg Stock Exchange (JSE) (the 'JSE Listings Requirements').</p> <p>More specifically, section 122 of our Companies Act (read with sections 82 through 84 of our Takeover Regulations) contains our stake building/anti-creep disclosure rules – which are generally aimed at providing transparency to South African incorporated listed companies in respect of any shareholder who acquire influence or control over the said company. While our JSE Listings Requirements reinforce the application of our stake building and other shareholding disclosure obligations contained under our Companies Act as applicable to companies listed on the JSE but goes further to require additional major shareholdings disclosure from listed companies in their annual reports and shareholder meeting circulars/notices.</p> <p><i>Stake building disclosure</i></p> <p>Section 122(1) of the Companies Act provides that a person who acquires or disposes of a 'beneficial interest' (refer to the broad definition in Question 5) in outstanding securities of a South African incorporated listed company, such that as a result of the acquisition that person would hold (or in the case of a disposal, no longer hold) securities of that class amounting to a particular multiple of five per cent (eg, five per cent, ten per cent, 15 per cent or any further multiple of five per cent) ('notification thresholds'), must notify the listed company concerned in a prescribed form within three business days of completion of the relevant trade (whether acquisition or disposal, as applicable).</p>

		<p>For the purposes of calculating whether the relevant notification thresholds have been crossed:</p> <ul style="list-style-type: none"> • when determining the total number of outstanding securities of the relevant securities, a person is entitled to rely on the most recently published statement by the listed company; and • when determining the number of securities held by a person contemplated, options, conversion or similar rights must be included. <p>These disclosure/notification requirements apply to a person irrespective of whether:</p> <ul style="list-style-type: none"> • the person acquires or disposes of any securities directly or indirectly; or individually or in concert with any other person; or • the stipulated percentage of issued securities is held by that person alone, or in aggregate by that person together with any related or interrelated person, and any person who has acted in concert with any other person. <p>In turn, upon receipt of a trade notification, the listed company is obliged to: (1) notify the South African Takeover Regulation Panel (TRP); and (2) publicly announce the information contained in the notice to its shareholders, unless the notice concerns a disposal of less than one per cent of the relevant class of securities (which level of disposal does not require public announcement).</p> <p><i>JSE Listings Requirements</i></p> <p>The JSE Listings Requirements further reinforce that if the notification thresholds above are crossed as a result of an acquisition or disposal, the listed company is required within 48 hours of receipt of the relevant notice, to public announce the detail of the notification received through the Stock Exchange News Service of the JSE (SENS).</p>
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2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline for disclosure? A shareholder who acquires (or disposes) a beneficial interest in a listed company resulting in a notification threshold being crossed is required to notify the company concerned within 3 business days of completion of the relevant trade (whether acquisition or disposal, as applicable). In turn, the listed company must notify the TRP and publicly announce the acquisition to its shareholders as soon as reasonably possible after receiving such a notification. For further detail, please refer to our more detailed response to Question 1.</p> <p>b. Form of disclosure: The acquirer or disposer (as applicable) must notify the company by way of a prescribed form disclosure document. The listed company must submit this document to the TRP, and must, within 48 hours of receipt of the relevant notice, disclose the information to its shareholders by way of a public announcement via SENS. For further detail, please refer to our more detailed response under Question 1.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. Voting shares: Yes.</p> <p>b. Non-voting shares: No.</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments): Yes, provided that the instrument is convertible into voting shares.</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference): NO. South African law is not as developed as the Disclosure Guidance and Transparency Rules (DTR)/European disclosure regime for financial instruments which are referenced to securities (but do not result in actual trades in securities), but this is currently being assessed and, in any event, dually listed companies who make disclosure in their markets will equally be required to make disclosure through SENS owing to their listing on the JSE.</p> <p>e. Instruments which give right to vote but no economic benefit: YES.</p> <p>f. Other type of instruments: Only to the extent that the instrument is convertible into voting shares.</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. Acquisition of beneficial ownership: YES. For further information, please refer to our more detailed response to Questions 1 and 5.</p> <p>b. Acting in concert or forming a group in relation to the securities in question: YES. Disclosure is required following an acquisition or disposal of beneficial interest where the stipulated percentage of outstanding securities is held by that person alone, or in aggregate by that person together with any related or interrelated person, and any person who has 'acted in concert' with any other person. 'Act in concert' means any action pursuant to an agreement between or among two or more persons, in terms of which any of them cooperate for the purpose of entering into or proposing an affected transaction or offer.</p> <p>c. Securities lending, short positions: Insofar as short positions are concerned, no, on the assumption that short positions only give the parties exposure to price of the listed securities and do not actually result in a change of beneficial interest (or trade) in the actual underlying securities. South African law is not as developed as the DTR/European disclosure regime for financial instruments which are referenced to securities (but do not provide in actual trades), but this is currently being assessed and, in any event, dually listed companies who make disclosure in their markets will equally be required to make disclosure through SENS owing to their listing on the JSE.</p> <p>Insofar as securities lending is concerned, if no beneficial interest (see broad definition above which) has been transferred in terms of the securities lending agreement, then no disclosure is triggered.</p>
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		<p>d. Sale: YES. Disclosure is triggered upon the disposal of a beneficial interest if, as a result, that person's shareholding drops below an increment of five per cent.</p> <p>e. Mere passive reach of threshold (such as a stock buyback): NO, insofar as our notification thresholds are breached owing to a passive transaction (such as a stock buyback). YES, insofar as breach of our MTO threshold is concerned as a result of a passive transaction. Please refer to the more detailed response on the MTO trigger in Question 12.</p> <p>f. Other: N/A</p>
5.	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Any of a, b or c.</p> <p>'Beneficial interest' is defined in our Companies Act as including any right or entitlement of a person, whether through ownership, agreement, relationship or otherwise, alone or together with another person to:</p> <p>a. receive or participate in any distribution in respect of the company's securities;</p> <p>b. exercise or cause to be exercised, in the ordinary course, any or all of the rights (including voting) attached to the securities; or</p> <p>c. dispose or direct the disposition of the company's securities, or any part of a distribution in respect of securities.</p> <p>A beneficial interest can also be established through instances where voting rights are exercisable by a person acting as depositary, proxy holder, pledgee, or pursuant to an agreement for temporary assignment of those rights relating to securities.</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. 'Act in concert' is defined in the Companies Act to mean any action pursuant to an agreement between or among two or more persons, in terms of which any of them co-operate for the purpose of entering into or proposing an 'affected transaction' (which includes the acquisition of a stake above five per cent or additional increments of five per cent or any change of control transaction, howsoever effected), irrespective of the manner of the co-operation or the degree of participation of each (or any) of them.</p> <p>The following persons are (rebuttably) presumed to be acting in concert, even in the absence of an agreement:</p> <ul style="list-style-type: none"> • a person granted an option to acquire shares with a voting right is presumed to have acted in concert with the grantor of the option (unless the voting rights are retained by the grantor); • a company is presumed to be acting in concert with: (1) its directors; (2) any other company controlled by one or more of its directors; and (3) any trust of which any of its directors are beneficiaries or trustees; and • any of a company's pension funds, provident funds, benefit funds and share incentive schemes are presumed to be acting in concert with one another. <p>Persons acting in concert can also rebuttably be presumed where voting rights are exercisable where two or more persons holding securities in a listed company have entered into a voting pool or relationship agreement insofar as the voting and transfer of those securities are concerned.</p> <p>b. A formal or written agreement is not required in order to establish that parties are acting in concert. Such cooperation may be explicit or implicit and may arise from informal arrangements or coordinated behaviour. Even in the absence of a formal agreement, parallel conduct aimed at exercising or consolidating influence or control over a listed company may be sufficient to qualify as acting in concert.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>Insofar as (a) to (g) is concerned, if the notification thresholds have been breached, then the only information required as per the prescribed form that a person is required to deliver to the listed company, is: (1) name and identity of person making the notification (and registration number if applicable); (2) name of the issuer/listed company; and (3) the percentage of equity owned after the acquisition or disposal that results in the notification to the listed company. More detailed disclosure may be required, by an ADS holder disclosing its increase in ADS holding which results in it acquiring, through its rights under a deposit agreement with a depository bank (which in turn holds in excess of a specific multiple of five per cent), a beneficial interest in excess of a multiple of five per cent in a listed company.</p> <p>Insofar as (h) is concerned, to the extent there are parties acting in concert in respect of the acquisition, each person involved must make a declaration in the prescribed form (Form TRP84) to the TRP within five business days of coming into concert, disclosing the identities of all the concert parties and the identity of the issuer/listed company.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>Direct legal owner/beneficial owner: Insofar as (a) and (b) are concerned, our notification and disclosure obligations apply to the ultimate beneficial owners but equally applies to a nominee entity, asset manager or similar person which has authority, by any means, to exercise rights of disposal or rights of voting with respect to particular securities. For more information, please refer to our more detailed response in Questions 1, 5, 6 and 7.</p> <p>Parties acting in concert: Insofar as (c) parties acting in concert are concerned, all of the parties are obligated to disclose in the prescribed form to the relevant listed company and the TRP. For more information, please refer to our more detailed response to Question 7.</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. Obligation for money/asset manager to disclose their positions: YES. Our notification and disclosure obligations under our Companies Act and JSE Listings Requirements do not distinguish between types of investors. The disclosure requirements apply to money/asset managers, independently of whether they apply to their underlying clients.</p> <p>b. Obligation for passive investors to disclose: NO. However, if a passive investor's shareholding is held by a nominee shareholder, the listed company is empowered in terms of section 56 to call upon the nominee shareholder to disclose/reveal the ultimate beneficial shareholder.</p>
<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>There is no specific trigger for the revision of the disclosure statement – rather, a new disclosure statement must be provided for every acquisition or disposal above or below additional increments of five per cent in the target company.</p> <p>The timelines are the same as the original disclosure – within three business days of the acquisition or disposal.</p> <p>There is no moratorium on further acquisitions until (or for some period after) the disclosure is made.</p>

<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>Section 168 of the Companies Act provides that any person may file a complaint with the TRP in respect of a matter contemplated in Part B or C of Chapter 5 (Fundamental Transactions) or in the Takeover Regulations; or with the South African Companies House, known as the Companies and Intellectual Property Commission (CIPC) in respect of any other provision of the Companies Act, alleging that a person has acted inconsistently with the Companies Act or that the complainant's rights under the Companies Act or the memorandum of incorporation (a constitutional/ founding document) has been infringed.</p> <p>A failure by the listed company or shareholder to comply with any of the disclosure obligations in section 56 could be reported to and investigated by the CIPC; while a failure by a listed company or the person holding a beneficial interest to disclose and notify in compliance with section 122 could in turn be reported to the TRP. A listed company that knows of a person who has failed to make a 'disclosure' required in terms of section 122 must lodge a complaint with the TRP in terms of section 168.</p> <p>Upon receiving a complaint, the TRP or the CIPC has broad powers to investigate and, should they find the complaint to have merit and accordingly believe on reasonable grounds that a person has contravened the Companies Act or assented to, been implicated in, benefited (directly/indirectly) from a contravention of the Companies Act, will issue a compliance notice.</p> <p>Should the relevant party fail to comply with the compliance notice (which may request the relevant person to cease, correct, rectify or reverse any contravention), the TRP or CIPC, as applicable, may: (1) apply to a court to issue an administrative fine (not exceeding the greater of ten per cent of the respondent's turnover for the period within which they failed to comply with the compliance notice and ZAR 1m); or (2) refer to the National Prosecuting Authority for prosecution in terms of section 214(3) (which could, if the person is convicted, result in a fine, imprisonment for a period not exceeding 12 months or both), but may not do both in respect of a particular compliance notice.</p>
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		Furthermore, any person who contravenes any provision of the Companies Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention.
12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. Existence of MTO requirement in the national jurisdiction: YES.</p> <p>b. Level/threshold: An MTO is triggered when a person acting alone, or two or more inter-related persons, or two or more persons acting in concert, have acquired a beneficial interest in voting rights in securities of a listed company equal to, or in excess of, 35 per cent of the outstanding voting rights (having not previously been unable to exercise such prescribed percentage).</p> <p>c. Instrument/securities that trigger MTO: An MTO is triggered by voting securities. However, the TRP has previously ruled that voting securities with limitations imposed on voting rights in certain circumstances by a company's constitutional documents may nonetheless trigger an MTO.</p> <p>d. Transactions/events/activities that trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders etc): MTOs are triggered by direct or indirect acquisitions that result in voting rights in securities of a listed company being held by a person (or persons acting in concert) equal to or above the 35 per cent threshold, is also triggered if as a result of a buyback, a person (or persons acting in concert) holds at least 35 per cent of the outstanding securities of the relevant class.</p> <p>e. Exceptions/opting-outs/opting-in: YES. A person is not obligated to make a mandatory offer if: (1) the 35 per cent threshold is crossed as a result of securities being acquired by way of an issue as consideration for an acquisition, a cash subscription, or a rights offer; and (2) at least 50 per cent the independent shareholders of the listed company have waived their right to receive an MTO.</p>

		f. Sanctions in case the MTO is not launched or completed: In the event of breach of the obligation to launch an MTO, the TRP may order that voting rights attached to the relevant shareholding cannot be exercised and requiring the acquirer to sell down below the 35 per cent threshold.
13.	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. Restrictions on formal bid pricing: YES. An MTO must be launched at a price identical to, or where appropriate, similar to, the highest consideration paid by the offeror for securities in the target within the prior six-month period.</p> <p>b. Can an MTO be subject to conditions? NO, except for regulatory conditions – for example, antitrust or sector-specific regulatory approvals.</p> <p>c. Consideration to shareholders? While consideration for an MTO may be in the form of shares, it must be accompanied by a cash alternative if the offeror acquired securities that carry five per cent or more of the voting rights of the target for a cash consideration within the prior six-month period.</p>
14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	NO.

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for South Korea

	Which jurisdiction are you covering?	South Korea
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Five per cent report – triggered when shareholding reaches five per cent or more. Thereafter, any change of one per cent or more, or any change in specially related parties and so on requires filing.</p> <p>Ten per cent report applicable to major shareholders and officers of listed companies. Triggered when a shareholder reaches ten per cent holding or when an officer of a listed company acquires any shares of such company. Thereafter, any change in shareholding requires filing.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Deadline</p> <p>1. five per cent report:</p> <ul style="list-style-type: none"> • five business days from acquiring five per cent or more shares; or • five business days from any change in one per cent or more (in case of holdings for simple investment purpose only, the filing deadline is extended to the 10th of the next month after the change occurs). <p>2. ten per cent report:</p> <ul style="list-style-type: none"> • five business days from triggering event. <p>b. Form of disclosure: Form filing designated by the Financial Supervisory Service through the electronic submission system operated by such authority.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES (but only for ten per cent report).</p> <p>c. YES; if YES: must such instruments be exercisable/ convertible within a time period? NO</p> <p>d. NO</p> <p>e. YES</p> <p>f. Securities subject to report:</p> <ol style="list-style-type: none"> 1. five per cent report – the following securities related to shares with voting rights: <ul style="list-style-type: none"> • shares (common shares with voting rights, preferred shares with voting rights, and preferred shares convertible into shares with voting rights); • warrants; • convertible bonds; • bonds with warrants; • exchangeable bonds exchangeable into the above securities; and • derivative linked bonds linked to the above securities. 2. ten per cent report: the above securities + non-voting shares and participating bonds
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>f. Other transactions triggering reporting: for both five per cent and ten per cent report, inheritance, gift, a share dividends also trigger reporting. In addition, the following also trigger reporting:</p> <p>1. five per cent report:</p> <ul style="list-style-type: none"> • addition or exclusion of specially related parties; • (for holdings for participating in management purposes) execution of material contracts affecting one per cent or more shareholdings; • (for holdings for participating in management purposes) change in the form of holdings affecting one per cent or more shareholdings; and • change in the purpose of the shareholding. <p>2. ten per cent report:</p> <ul style="list-style-type: none"> • appointment as officer; and • becoming a shareholder who exercises de facto control (by appointing the representative director or majority of the directors either alone or together with other shareholders).
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. Any of a, b or c</p> <p>Five per cent report: applies to legal ownership as well as the following 'holdings similar to legal ownership':</p> <ul style="list-style-type: none"> • holding securities for its own account, irrespective of whose name the shares are held; • having the right to require delivery of securities pursuant to law or contract; • having voting rights or the right to direct voting pursuant to law or contract; • having the right to acquire or dispose of the securities pursuant to law or contract; • having the right to complete the purchase of securities as a purchaser; • having rights pursuant to derivatives with securities as underlying assets pursuant to which the holder can become the purchaser of such securities upon exercise of such rights; and • holding stock options. <p>Ten per cent report: applies only to legal ownership</p>
<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is 'parallel action' sufficient?</p>	<p>a. The following constitutes acting in concert:</p> <ul style="list-style-type: none"> • acquiring or disposing the shares together (tag/ drag-along); • transferring the securities among the parties after acquisition; and • exercising voting rights together. <p>b. Does not need to be specified in written contract but oral agreement would be enough.</p>

<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES (in case of holdings for participating in management purposes or general investment purposes only).</p> <p>d. YES</p> <p>e. YES. Simple investment or general investment purpose: by disclosing as such – for holding for participating in management purposes; need to disclose specific activities that will be undertaken for such a purpose.</p> <p>f. YES (in case of holdings for participating in management purposes or general investment purposes only).</p> <p>g. YES</p> <p>h. YES</p> <ul style="list-style-type: none"> • Details on the holding entity and its specially related parties (nationality, address, occupation and so on); • in case the holding entity and its specially related parties are corporate entities, certain financial information, the representative director, internal entity with decision making powers, largest shareholder and so on; and • type of holding with details on legal ownership and ‘holdings similar to legal ownership’ (In case of holdings for participating in management purposes only)
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. Specially related parties of the holding entity who hold securities (in case of five per cent report only).</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES. The asset manager is disclosed as joint holder in the report to be submitted by the actual holder (customer).</p> <p>b. YES. May use short form only in case of holdings for simple investment purposes.</p> <p>c. NO</p>
<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. Five per cent report: change in one per cent or more.</p> <ul style="list-style-type: none"> • Ten per cent report: acquisition of 1,000 or more shares or acquisition or disposition price equal to or above KRW 10m. <p>c. Change in purpose (even without further purchase; applicable to five per cent report only).</p> <p>d. Five per cent report:</p> <ul style="list-style-type: none"> • addition/exclusion of specially related parties. • execution of material contract (in case of holdings for general investment purpose and holdings for participating in management purposes only and for contracts that affect one per cent or more securities only); and • change in type of holding (in case of holdings for participating in management purposes only and in case of changes that affect one per cent or more of the securities only). <p>Ten per cent report: resignation/termination as officer accompanied by any change in holdings.</p>

		<p>e. Five per cent report: (1) tenth day of the next month (in case of holdings for simple investment purposes only); (2) within ten business days (in case of holdings for general investment purposes only); and (3) within five business days (in case of holdings for participating in management purposes only).</p> <p>Ten per cent report: within five business days.</p> <p>f. Five per cent report – in case of holdings for participating in management purposes only, no additional acquisitions of securities or exercise of voting rights may be made from the day after the trigger event until five business days after such trigger event.</p> <p>Ten per cent report: in case an officer or major shareholder intends to transact one per cent or more securities or in an amount of KRW 5bn or more, such entity must report its plans to the FSS and the KRX 30 days prior to such transaction, and may not close such transaction until such 30 days has lapsed.</p>
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. YES</p> <p>a. Criminal sanctions:</p> <ul style="list-style-type: none"> • misstatement and omission of material information: imprisonment of five years or less, or criminal fines of up to KRW 200m; • failure to disclose: imprisonment of three years or less, or criminal fines of up to KRW 100m; and • violation of FSC disposition order: imprisonment of one year or less or criminal fines of up to KRW 30,000.

<p>11.</p>		<p>b. Administrative penalty: failure to disclose or misstatement or omission of material information; up to the lesser of 1/10,000 of total market capitalisation of the relevant shares or KRW 500m.</p> <p>Administrative fines: in case of avoidance or impeding government investigation or failure to comply with request for submission or documents or attendance by the government.</p> <p>d.</p> <ul style="list-style-type: none"> • Restriction on exercise of voting rights: exercise of voting rights restricted in case of violation of five per cent report, on the violated portion; • order for disposition FSC may issue order to dispose of the securities in violate of the disclosure requirements; • investigation and correction orders: FSC may order submission of information or investigation on the relevant reporting entity; and • other administrative sanctions: FSC may suspend or prohibit trading, recommend termination of employment of officers, report to prosecutors office, issue warnings and so on, on the violating entity. <p>e. Private action may also be brought in court or filed with the regulators.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. NO.</p> <p>Korea currently does not have mandatory takeover bid rules. Several amendment proposals have currently been submitted in the national assembly to adopt such rules with varying requirements among such proposals.</p> <p>Korea does have a mandatory tender offer provision which applies in case an acquirer (together with its specially related persons) acquires five per cent or more of listed shares outside the market within a six-month period from ten or more sellers. In such case the acquirer must acquire such shares pursuant to the relevant tender offer process which requires the submission of a report to the FSC, and acquisition must be made after 20 days and within 60 days of submission of such report. No additional acquisitions may be made within such period and no changes may be made to the terms of the acquisition that was reported.</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>N/A</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Spain

	Which jurisdiction are you covering?	Spain
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Spanish regulations on the disclosure of significant shareholdings require that any shareholder who, by whatever means, acquires or transfers shares granting voting rights in an issuer must notify the issuer and the Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores or CNMV) of any transactions in shares of the issuer or financial instruments referencing them which cause the relevant shareholder's holding to reach, exceed or fall below the thresholds of three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 45 per cent, 50 per cent, 60 per cent, 70 per cent, 75 per cent, 80 per cent and 90 per cent of the total voting rights of the issuer.</p> <p>Should the person or group executing the transaction be resident in a tax haven, the notifiable threshold is reduced to one per cent (and successive multiples thereof).</p> <p>Also, in case of a takeover bid over a company, target company shareholders who acquire securities carrying voting rights must notify the CNMV when the voting rights held by them reach or exceed one per cent. Shareholders who already hold three per cent of the voting rights must also notify any change in their percentage.</p>

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. As soon as practicable and no later than four trading days after the date on which the obliged person becomes aware or should have become aware of the circumstance that gives rise to the notification obligation. For example, in each case, the date on which the obliged person is deemed to have become aware shall be understood as follows: (1) the date when the obligated subject knew or was in a position to know the circumstances that triggered the obligation to report; (2) the first trading day following the registration of the capital increase with the Commercial Registry; (3) the date of publication on the CNMV's website of the change in the total number of voting rights of the issuer; (4) the first trading day following the effectiveness of the transaction, in the case that it has not taken place in the regulated markets; or (5) the first trading day following the admission to trading of the shares, as the case may be.</p> <p>b. The submission will be carried out by filing the corresponding significant shareholdings notification form available on the CNMV's official website.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES. Such instruments do not have to be exercisable or convertible within a time period. However, the notification must include the date or period within which the shares are to be acquired or may be acquired.</p> <p>d. YES, both total return swaps and contracts of difference.</p> <p>e. YES</p> <p>f. Any other contract or agreement with similar economic effects which may be settled by physical delivery of the underlying securities or in cash.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. Securities lending triggers disclosure, although short positions do not.</p> <p>e. YES.</p> <p>f. YES, among others: (1) the first admission to trading of an issuer's shares on a regulated market or another regulated market domiciled in the EU; (2) capital increases charged in full to reserves, when there is an increase or decrease in the proportion of voting rights as a result of the purchase or disposal of subscription rights to the free allocation of shares carrying voting rights; (3) acquisitions, transfers or holdings of shares by husbands, spouses and children under the parental authority of the obliged subject, unless such shares belong exclusively to the related person; (4) transfers <i>mortis causa</i>; (5) due to a process of liquidation of a company; or (6) arising from company mergers or spin-offs.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. NO</p> <p>b. YES</p> <p>c. NO</p> <p>d. NO</p> <p>e. YES</p> <p>f. NO</p>

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. Acting in concert is established by the existence of agreements/arrangements which aim to implement, through the concerted exercise of voting rights, a lasting common policy regarding the management of the company or seek to exert significant influence over it.</p> <p>Entities are considered to belong to the same group if they constitute a single decision-making unit because one of them holds or may hold, directly or indirectly, control over the others, or because such control corresponds to one or more natural persons acting in concert. The existence of a decision-making unit is presumed when one of the companies (the parent company): (1) holds the majority of the voting rights of the controlled companies, or can exercise them through agreements with third parties; (2) has the power to appoint or dismiss the majority of the directors of the controlled companies; (3) has appointed the majority of the directors of the controlled companies who hold their position at the time of formulating the consolidated accounts during the immediately preceding two financial years; or (4) when the majority of the directors of the controlled companies are directors or senior managers of the parent company.</p> <p>b. Agreements/arrangements may be tacit, without the need for them to be formalised in writing.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES, date and relevant threshold reached, exceeded or fallen below.</p> <p>e. NO</p> <p>f. YES, the information to be provided includes the identity of the parties to the agreement and the number of voting rights owned by each of the parties on an individual basis.</p> <p>g. NO</p> <p>h. YES, full control chain of the exercise of the voting rights of the issuer or of the entities holding the financial instruments must be described.</p> <p>i. For voting rights: (1) full name of the issuer; (2) reasons triggering the obligation to notify; (3) final situation in terms of number of voting rights held; (4) full name of the shareholder (and, as the case may be, the person that may exercise the voting rights on its behalf); and (5) detailed information of the voting rights. For financial instruments: (1) final situation in relation to the voting rights; (2) date or period in which the shares shall be acquired; (3) expiration date of the financial instrument; (4) full name of the holder of the financial instrument; and (5) full name of the underlying issuer.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. NO, although direct/legal owner must be identified.</p> <p>b. YES</p> <p>c. NO, although parties acting in concert must be identified. This information will not be made available to the public.</p> <p>d. NO</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. NO</p> <p>b. NO</p> <p>c. The exceptions to the disclosure obligation are as follows: (1) shares acquired solely for clearing and settlement purposes within the standard short settlement cycle; (2) shares acquired by financial intermediaries providing the service of securities administration and custody, provided that they may only exercise the voting rights inherent to such shares with given instructions; (3) market makers who reach or exceed a three per cent or five per cent threshold under certain conditions; (4) voting rights held in a trading portfolio, subject to specific conditions; and (5) voting rights associated to shares acquired for stabilisation purposes.</p> <p>There is no short form of disclosure.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. A new disclosure must be made if relevant shareholder's total holding reaches, exceeds or falls below the thresholds of three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 45 per cent, 50 per cent, 60 per cent, 70 per cent, 75 per cent 80 per cent, and 90 per cent of the total voting rights of the issuer.</p> <p>b. As mentioned above, an increase which reaches the thresholds of three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 45 per cent, 50 per cent, 60 per cent, 70 per cent, 75 per cent, 80 per cent or 90 per cent of the total voting rights of the issuer.</p> <p>c. Change in intent/purpose does not trigger notification.</p> <p>d. NO</p> <p>e. New disclosure must be filed as soon as possible and no later than four trading days after the date on which the obliged person became aware or should have become aware of the circumstance that gives rise to the disclosure obligation.</p> <p>f. NO</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES, including among others: (1) fines of up to €5m; (2) suspension or limitation of market activities for a period of up to five years; (3) suspension or removal from managerial positions with possible disqualification; (4) revocation or suspension of firm authorisations; (5) prohibition from proprietary trading; and (6) restitution of the benefits obtained.</p> <p>c. YES, a private action for damages could potentially be brought forward.</p> <p>d. YES, restitution of the benefits obtained, or the losses avoided through the commission of the infringement, if such can be determined.</p> <p>e. There is no specific private right of action for violation of stake disclosure requirements, as indicated, although a private action for damages could potentially be brought forward.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. MTO must be launched in the following cases in which control of the issuer is acquired: (1) an individual or legal entity directly or indirectly acquires a stake in the issuer’s voting rights equal to or greater than 30 per cent; or (2) an individual or legal entity directly or indirectly acquires less than 30 per cent of the voting rights of the company but, within 24 months of the date of acquisition of the percentage, appoints more than half of the members of the company’s board of directors.</p> <p>c. Shares or other securities that confer, directly or indirectly, voting rights in the issuer. Note the acquisition of securities or other financial instruments that give the right to subscribe, convert, exchange or acquire shares that carry voting rights shall not give rise to an obligation to launch a tender offer until such subscription, conversion, exchange or acquisition takes place.</p> <p>d. Control of the issuer may be acquired through: (1) the acquisition of shares or other securities that confer, directly or indirectly, voting rights in the issuer; (2) shareholder agreements entered into with other holders of securities in the issuer, when it is understood that such agreement is intended to establish a common policy with regard to the management of the company or to have a significant influence on it, as well as any other agreement that, for the same purpose, regulates voting rights on the board of directors or on the executive or delegated committee of the company; and (3) indirect or subsequent takeovers when a percentage of voting rights equal to or greater than 30 per cent is directly or indirectly reached.</p>
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		<p>e. YES, they are the following: (1) restructuring or resolution measures taken by certain public institutions (eg, deposit guarantee funds); (2) transactions resulting from public authority powers, including expropriation; (3) unanimous shareholder resolutions (which resolve to delist issuer); (4) debt restructuring via debt-to-equity conversion in distressed companies under; (5) <i>inter vivos</i> or <i>mortis causa</i> acquisitions under specific conditions; (6) acquisition of control following a VTO that: (I) is at an equitable price; or (II) is accepted by at least 50 per cent of the voting rights to which it was addressed; and (7) acquisitions via merger, provided shareholder voted against merger and (8) the transaction does not have as its primary purpose the acquisition of control, but rather an industrial or business objective. In cases referred to in sections (4) and (8) above, the CNMV must confirm that an MTO is not required.</p> <p>f. Failure to fulfil the obligation to launch an MTO is considered a very serious infringement and may be punished with one or more of the regulatory sanctions including among others: (1) fines up to €5m; (2) suspension or limitation of market activities for up to five years; (3) suspension or removal from managerial positions with possible disqualification; (4) revocation or suspension of firm authorisations; (5) prohibition from proprietary trading; and (6) restitution of the benefits obtained. In addition, the breaching party may not exercise the political rights derived from any of the securities of the listed company that they are entitled to exercise</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. In case of an MTO, the offer must be made at an equitable price, which is generally defined as the highest price paid by the offeror (or persons acting in concert) for shares of the target company during the 12 months prior to the offer.</p> <p>When an MTO takes place without the offeror having acquired issuer's shares during such period, the fair price will be determined by reference to the underlying book value of the company, break-up value, average market price during previous six months, discounted cash flows, company multiples, comparable transactions or other valuation methods generally accepted.</p> <p>b. An MTO cannot be subject to any conditions other than obtaining the relevant authorisations required by supervisory bodies other than the CNMV (ie, authorisations relating to merger control or foreign direct investment).</p> <p>c. MTOs may be structured as a purchase, as an exchange of securities or as a combination of both. However, if there is an exchange of securities in an MTO, a cash consideration that is at least financially equivalent to the value of the exchange offer must be offered as an alternative.</p> <p>d. NO</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Sweden

	Which jurisdiction are you covering?	Sweden
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Any person reaching, exceeding or falling below an ownership or controlling interest of 5, 10, 15, 20, 25, 30, 50, 66.67 or 90 per cent of the total number of issued shares or votes in a Swedish company listed on a regulated market must disclose this pursuant to the Swedish rules on disclosure of large shareholdings.</p> <p>In addition to the disclosure of large shareholdings, pursuant to the Swedish mandatory offer rules any person (or parties acting in concert) acquiring shares and thereby reaching or exceeding an ownership of 30 per cent of the total number of issued votes in a Swedish company listed on a regulated market or multilateral trading facility must immediately disclose this. This disclosure is made by way of a press release.</p>
2.	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Disclosure of a large shareholding should be made to the Swedish Financial Supervisory Authority (SFSA) and to the issuer within three trading days from the transaction date.</p> <p>b. NOTification to the SFSA is made through the SFSA's online portal or on a special form which is typically emailed to the SFSA. Notification to the issuer is typically made by emailing a copy of the registered and published SFSA notification to the issuer.</p>

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. YES. However, a Swedish limited liability company cannot issue non-voting shares.</p> <p>c. YES – the disclosure obligation does not require that such instruments are exercisable/convertible within a certain time period. Only options/warrants and convertible instruments that give rights to acquire existing shares are subject to disclosure obligation. Options/warrants and convertible instruments that give rights to subscribe for newly issued shares are not subject to disclosure obligations.</p> <p>d. YES</p> <p>e. YES</p> <p>f. YES – depository receipts which carry the right to vote in respect of the underlying shares to which the depository receipt pertains and financial instruments which: (1) entitle the holder to acquire shares which have already been issued and/or which are attributable to such shares; and/or (2) have a financial effect similar to financial instruments referred to in item (1) above, irrespective of whether they can be settled physically or in cash. Examples of such financial instruments include transferable securities, forward agreements, interest hedging agreements and other contracts or agreements which can be settled physically or in cash.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. As a starting point, only long positions (but not short positions) trigger disclosure. Securities lending may trigger disclosure obligation depending on how such transactions are structured, for example if the control of the voting rights attached to the lent shares are transferred from the lender to the borrower.</p> <p>d. YES</p> <p>e. YES</p> <p>f. Generally, any transaction/event/activity whereby a person, directly or indirectly, gain control over the manner in which the voting rights for the shares shall be exercised triggers disclosure.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. NO</p> <p>b. Generally YES</p> <p>c. Generally YES, if such power, directly or indirectly, entails the power to direct the voting of the securities in question.</p> <p>d. NO</p> <p>e. NO</p>

		<p>f. For the purpose of the Swedish rules on disclosure of large shareholdings, holdings attributed to the relevant person also include shares that: (1) are held by a third party with whom the relevant person has entered into an agreement to take a long-term common position with respect to the management of a company through a coordinated exercise of voting rights; (2) are held by a third party on behalf of the relevant person where the relevant person controls the manner in which the voting rights for the shares shall be exercised; (3) are held by a subsidiary of the relevant person; (4) are held by a third party who, pursuant to an agreement with the relevant person for a limited period and for compensation, has transferred the right to vote the shares to the relevant person; (5) the relevant person has received as security, where the relevant person controls the manner in which the voting rights for the shares are exercised and has declared its intention to exercise them; (6) the relevant person has a life-long right of disposal, where the relevant person controls the manner in which the voting rights for the shares shall be exercised; (7) have been placed into the custody of the relevant person, where the relevant person controls the manner in which the voting rights for the shares shall be exercised; and (8) the relevant party has been granted a proxy to exercise the voting rights for, where the relevant person controls the manner in which the voting rights for the shares shall be exercised.</p> <p>For the purpose of the Swedish rules on disclosure of large shareholdings, a subsidiary is any entity in which the relevant person holds or controls the majority of the voting rights. In addition, any entity over which the relevant person can exercise control – even when only holding a minority of the voting rights, for example, based on an agreement with other shareholders or special rights in the articles or appoint – or remove more than one-half of the members of its board of directors, would be regarded a subsidiary.</p>
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. Generally, arrangements with a third party with whom a person has entered into an agreement to take a long-term common position with respect to the management of a company through a coordinated exercise of voting rights constitutes acting in concert/forming a group.</p> <p>b. An agreement (whether written or oral) that fulfils the criteria indicated in Question 6 a. above is sufficient – ‘parallel action’ alone is not sufficient.</p>
<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. Generally yes but price does not have to be stated in the filing.</p> <p>e. NO</p> <p>f. NO</p> <p>g. NO</p> <p>h. YES, the chain of controlling companies must be stated in the filing.</p> <p>i. (1) Percentage and number of voting rights; (2) identity and contact details for the person subject to the filing; and (3) if voting rights are controlled by proxy, information on former holders of such voting rights.</p>

8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. Generally, any party exercising control over the voting of the shares must disclose this. For example, this could be a bank controlling the voting of shares pledged as collateral.</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. Generally NO, provided that the managers do not control the voting of the securities.</p> <p>b. YES. There is no short form disclosure.</p> <p>c. Generally, there are exemptions for: (1) shares which are acquired solely to be used for clearing and settlement of transactions and which are held for a short period for this purpose; (2) shares which are managed by a person in their own name but on another person's behalf, provided that the manager is entitled to exercise the voting right for the shares only pursuant to written instructions; (3) shares placed at the disposal of, or provided by, a national central bank which is part of the European central banking system when the bank fulfils its obligations as a monetary authority, provided that the transaction in question is short-term and that the voting rights attached to the shares is not exercised. In addition, under certain circumstances, for example, Swedish or foreign credit institutions which conducts financing business, securities institutions, foreign investment firms and market makers may be exempted from disclosure obligation.</p>

<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. NO, but any inaccuracies in a filing must be corrected as soon as possible. However, each change in ownership resulting in reaching or passing, upwards or downwards, the relevant disclosure thresholds trigger a new separate disclosure obligation.</p> <p>b. N/A</p> <p>c. N/A</p> <p>d. N/A</p> <p>e. N/A</p> <p>f. N/A</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. NO</p> <p>b. YES, the SFSA may impose administrative fines. For a legal person the minimum fine is SEK 15,000 and the maximum fine is the higher of: (1) approximately SEK 89m; (2) five per cent of the legal person's turnover the preceding financial year or, where applicable, corresponding turnover on a group level; and (3) two times the profit realised as a consequence of the violation, if the amount can be ascertained. For a natural person the minimum fine is SEK 15,000 and maximum fine is the higher of: (1) approximately SEK 18m; and (2) two times the profit realised as a consequence of the violation, if the amount can be ascertained.</p> <p>c. NO</p> <p>d. YES, the SFSA may, where exceptional reasons exist (eg, severe and intentional violations to gain strategic advantages in a takeover situation), impose a ban on exercising the voting rights for the portion of shares reaching or exceeding the relevant thresholds.</p> <p>e. NO</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. 30 per cent of the total number of issued votes (MTO threshold).</p> <p>c. Shares and depository receipts representing shares.</p> <p>d. Acquisition of a shareholding which, alone or together with any shareholdings of parties closely related to the relevant person, corresponds to or exceeds the MTO threshold. Alternatively, the formation of a closely related party relationship (please see below for definition) whereby the parties obtain a shareholding that together corresponds to or exceeds the MTO threshold. The acquisition may also take the form of, for example, subscription or conversion or an acquisition under family law. Furthermore, the acquisition must be definitive, meaning that any conditions precedent for the acquisition must have been fulfilled and the acquirer must be able to exercise the voting rights for the relevant shares. For the purpose of the Swedish mandatory offer rules, a closely related party is: (1) a company in the same group as the relevant person; (2) a spouse or cohabitee of the relevant person; (3) any child under the custody of the relevant person; (4) any party with whom an agreement has been made to take a long-term common position with the purpose of achieving a controlling influence over the management of the target company through a coordinated exercise of voting rights; and (5) any party who cooperates with the relevant person for the purpose of acquiring control of the target company.</p>
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		<p>e. Upon reaching or exceeding the MTO threshold, the relevant person (or closely related party) has an obligation to immediately disclose this and within four weeks make an MTO. The MTO obligation may lapse if: (1) shares are divested so that the holding no longer corresponds to or exceeds the MTO threshold, or where the target company takes any measure whereby the holding no longer corresponds to or exceeds the MTO threshold; or (2) if the relevant person holds more than 90 per cent of all shares and compulsory acquisition of all remaining shares of the target company is requested by the relevant person. Furthermore, the Swedish Securities Council may grant exemptions from the MTO obligation. Grounds for exemption may, for example, be: (1) no change of controlling ownership has de facto occurred; (2) the holding arises through an acquisition in which the relevant person has not participated actively; (3) the holding has occurred as a result of a shareholder exercising a preferential right to subscribe for shares in a new share issue; and (4) the holding is acquired through a share issue with payment in kind.</p> <p>f. In respect of target companies listed on a regulated market, sanctions from the SFSA may include an order to make an MTO, to divest such number of shares required to fall below the MTO threshold, to dissolve a closely related party relationship, and imposition of administrative fines. In addition, if an MTO has been launched: (1) the relevant regulated market can impose monetary sanctions against an offeror or target company; and (2) the target company shareholders may claim damages. Furthermore, non-compliance may result in criticism by the Swedish Securities Council, which often attracts attention in the media and may result in negative publicity.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES. The consideration must be equal to or higher than the highest price paid by the offeror for any share within a period of six months before the offer, during the offer, or six months after the offer. Furthermore, in case of an indirect acquisition of at least 30 per cent of the votes in the target company (ie, the MTO threshold), for example, when the offeror has acquired control of a company (a holding company) that in turn owns shares in the target company, the prior transaction is to be considered as conducted at a price per share corresponding to the volume weighted average price (VWAP) of the share during the 20 trading days preceding the date of acquisition of such holding company. If, when acquiring the holding company, the offeror has assigned a higher price for the target company's shares than the fore-mentioned 20-day VWAP, the prior transaction is instead to be considered as carried out at a price per share corresponding to that assigned price. The offeror is obliged to provide information on the purchase price for the holding company, how the purchase price was allocated between the target company's shares and any other assets of the holding company and the reasoning for such allocation. Lastly, the Swedish Securities Council may grant exemptions from the rules on consideration.</p> <p>b. YES. However, MTOs may only be subject to completion conditions regarding regulatory approvals.</p> <p>c. YES, consideration must be offered in cash, but it is possible to offer alternative consideration in the form of, for example, shares or a combination of shares and cash as long as an all-cash alternative is also offered.</p> <p>d. N/A</p>
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14.	Is there a 'put up or shut up' mechanism in your jurisdiction?	YES. A fundamental principle of the Swedish takeover rules is that an offer may only be made if there is a serious intention to implement the offer and the offeror has made thorough preparations for its implementation. 'Indicative bids' or similar are not permitted. The Swedish Securities Council may impose a 'put up or shut up' deadline for a potential offeror to make an offer if the offeror has made a leak announcement of a possible offer, or if no leak announcement has been made but the target company would be hindered in the conduct of its affairs for longer than what is reasonable.
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Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for Switzerland

	Which jurisdiction are you covering?	Switzerland
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Under Swiss law, a disclosure requirement is triggered if a physical person or a legal entity (including investment funds) directly or indirectly acquires or disposes of shares or derivative instruments (ie, rights to acquire or dispose of shares such as options and similar derivative instruments; hereinafter together with the shares, 'reportable instruments'), in a listed company (issuer), thereby reaching, exceeding or falling below a threshold of three per cent, five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 33.3 three per cent, 50 per cent or 66.67 per cent of the voting rights. There are reporting obligations for the person or legal entity reaching, exceeding or falling below the relevant threshold, as well as a subsequent publication obligation for the issuer itself.</p> <p>The percentage triggering the reporting requirement is calculated by dividing the voting rights controlled by such person or legal entity directly, indirectly or acting in concert with third parties by the total number of voting rights of all share classes of the relevant issuer issued and registered with the commercial register.</p> <p>The disclosure requirement applies to Swiss companies whose equity securities are listed in Switzerland, as well as to non-Swiss companies whose equity securities are primarily listed on a Swiss stock exchange.</p> <p>This obligation applies regardless of whether the person or legal entity is domiciled in Switzerland or abroad.</p> <p>Additional notification duties towards the Swiss regulator, that is, the Swiss Financial Market Supervisory (FINMA), exist for licensed/regulated Swiss entities such as banks and securities firms or fund management companies if qualified participations are reached or fallen short of. The relevant thresholds are different from the ones set out in Swiss securities legislation.</p>

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. In general, notification to the issuer and the stock exchange is to be made within four stock exchange trading days (trading days), and the issuer itself must then publish this notification within two trading days.</p> <p>Deviating deadlines only apply in the following cases:</p> <ul style="list-style-type: none"> • In the event of acquisition by inheritance, a period of 20 trading days applies for the new shareholders (ie, the heirs). • In the event of transactions in own securities by the issuer, a publication period of four trading days applies for the issuer. <p>The above deadlines apply not only to the initial notifications (ie, transactions by which a shareholder (or a group of shareholders acting in concert) directly or indirectly exceeds, attains or falls below one of the above thresholds, but also to any changes to the reported information, for example, a change in the composition of a group, a change in the corporate structure through which a person or legal entity indirectly holds reportable instruments, changes in the address or name of the reported direct or indirect shareholders, or rollovers of reported derivatives.</p> <p>b. Both the report of the shareholder and the publication by the issuer must be made on the online platform of the disclosure office of the SIX Swiss Exchange ('SIX'). For the shareholder, this constitutes the written notification; for the issuer, it is the public announcement.</p> <p>This SIX publication platform is linked to a database in which all reports are stored. This database is open to the public, allowing users to search all historical and current reports.</p>
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES, all voting shares are counted towards the threshold, even if the voting rights cannot be exercised in a specific case due to a restriction on transferability or a restriction on voting rights.</p> <p>b. NO, non-voting shares such as participation certificates and dividend rights certificates are not counted towards the threshold.</p> <p>c. YES, not only shares, but also all derivative instruments relating to shares, that is, equity securities that confer voting rights, are counted towards the threshold. These include spot transactions (eg, long call or long put positions), cash-settled options, phantom stocks, convertible instruments, contracts for a difference, swaps and structured products consisting of a combination of derivatives and money market instruments.</p> <p>d. YES, all derivatives mentioned under (c) are counted towards the threshold, including those giving no right to acquire shares physically but conferring the economic equivalent (cash settlement).</p> <p>e. YES, all instruments that give the right to vote are counted towards the threshold, even if the economic benefits remain with the previous shareholder. Therefore, shares which have not (yet) been registered as shares with voting rights in the share ledger of the issuer, must nevertheless be disclosed in accordance with Swiss disclosure rules. In addition, any borrowers of shares under securities lending transactions are subject to disclosure obligations.</p> <p>f. All derivatives that relate in any way to shares or changes in share prices are subject to reporting requirements. This reporting requirement applies regardless of whether the derivatives in question provide for physical settlement or a cash settlement only. For example, securities lending or repo transactions and assignments for security purposes are counted towards the threshold. Mere pledges of shares do not trigger any disclosure requirements, provided the pledgee is not entitled to exercise the related voting rights.</p>
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<p>4.</p>	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES, the acquisition of beneficial ownership triggers disclosure requirements. The beneficial owner, that is, the person on whose behalf or reportable instruments are ultimately held, purchased or sold, is subject to the reporting requirements. As a general rule, the identity of the ultimate beneficial owner as well as the person or legal entity holding the reportable instruments directly must be disclosed.</p> <p>b. YES, acting in concert or forming a group in relation to the securities in question triggers disclosure requirements. Changes to the composition of the respective group trigger additional disclosure requirements. However, changes in shareholdings within the group do not trigger disclosure requirements, as long as the group does not exceed, reach or fall below one of the thresholds set out above.</p> <p>c. YES, as a general rule, purchase positions and sales positions need to be reported separately and there is no set off/netting between the two (gross principle). Accordingly, securities lending transactions, repo transactions and transfers for security purposes trigger disclosure requirements. In each case, the acquirer (borrower, purchaser or secured party) are required to disclose the transaction.</p> <p>d. YES, sales positions need to be reported (see c) above). This means that any respective derivatives positions need to be reported. The mere sale of securities needs to be reported in case a shareholder (or a group of shareholders acting in concert) reaches or falls below one of the above thresholds.</p>
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		<p>e. YES, any passive reaching or exceeding of a threshold as a result of changes in the voting rights as recorded in the relevant commercial register triggers disclosure obligations. The disclosure obligation is triggered with the entry of the new number of voting rights in the commercial register. Passive disclosure obligations can result from a decrease of the number of voting rights following a share buyback or a capital reduction. Passive disclosure obligations can also be triggered following a capital increase with a corresponding increase in the number of voting rights.</p> <p>f. In case of derivative instruments, not only the acquisition or disposal of derivative instruments, but also the subsequent exercise or non-exercise of such instruments is to be disclosed by way of an additional notification if by such exercise/non-exercise a relevant threshold is triggered. Financial intermediaries which acquire or sell reportable instruments for the account of their clients are themselves not subject to disclosure requirements.</p>
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<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>a. YES, the definition of beneficial ownership includes any economic interest. The person bearing the economic risk associated with a stake in an issuer (and thereby controlling the voting rights) is generally considered to be the beneficial owner.</p> <p>b. YES, the definition of beneficial ownership includes the power to direct the voting of the securities in question. This is – together with the economic risk – the defining element of the beneficial ownership.</p> <p>c. YES, the definition of beneficial ownership includes the power to direct the holding or disposition of the securities in question. As a result, and even though they are not beneficial owners in the strict sense, financial intermediaries such as banks, securities dealers, asset managers and nominees, and other persons or legal entities are subject to disclosure obligations, if they can decide on the exercise of voting rights at their own discretion. Additionally, proxy holders are included in the definition of beneficial ownership, if the transfer involves voting rights or the granting of a power of attorney, and such power of attorney is not granted specifically for one specific shareholders’ meeting.</p> <p>d. YES, all of a, b and c.</p> <p>e. YES, all of a, b and c.</p> <p>f. N/A</p>
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<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>a. The reporting requirement applies also to groups of persons/entities who acquire or hold reportable instruments ‘by common agreement’. Persons or legal entities act in concert or as an organised group if they coordinate their behaviour with regard to the acquisition and disposal of reportable instruments or the exercise of voting rights by means of a contract or other arrangements. The members of the group are jointly responsible for fulfilling the group’s reporting obligations.</p> <p>b. The existence of a written agreement/arrangement is not necessary for the constitution of a group; a purely informal agreement is sufficient. However, merely coincidental parallel behaviour is not sufficient.</p> <p>Persons/legal entities are deemed to constitute a group in the following situations (among others):</p> <ul style="list-style-type: none"> • shareholders’ agreements, which provide for a voting agreement or coordination of the exercise of voting rights; • conscious coordination of voting rights without a formal shareholders’ agreement, whereby joint decision-making is a mandatory requirement; • agreements on the joint purchase or sale of shares (eg, lock-up agreements); • communities of heirs, but not mere ‘family ownership’ structures where multiple family members hold shares in an issuer; and • shareholders who are part of a group of companies, that is, controlled by one person through majority voting rights or in any other way if the parent company of the group is not controlled by a natural person or a group of natural persons.
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. NO, Swiss disclosure rules are based on the number voting rights controlled by a person or legal entity. Note that the voting rights (expressed as a percentage of the total existing voting rights in any issuer as reflected in the commercial register) trigger disclosure as opposed to a stake in an issuer's equity. As outlined above (cf. 4c) above), the disclosure must be made according to the gross principle, that is, purchase and sales positions must be disclosed separately and may not be offset/netted against each other.</p> <p>b. YES, the type and number of all equity instruments or equity derivatives held by the persons involved must be disclosed.</p> <p>c. NO, the source of funds does not have to be disclosed.</p> <p>d. YES, certain details of the acquisition, for example the date of the acquisition or sale or the market price of the reportable instruments acquired or sold, respectively, must be disclosed. For derivatives, additional value-determining parameters depending on the classification of the derivative, namely whether it is a call or put option, the exercise price, the exercise ratio and the expiry or maturity date must be disclosed.</p> <p>e. NO, there are no disclosure requirements regarding the purpose of an acquisition or sale or any intentions.</p> <p>f. YES, in case of a group acting in concert, the nature of the agreement must be disclosed.</p> <p>g. NO, the agreements or arrangements must not be filed.</p> <p>h. YES, the identity of the individual members of a group must be disclosed. In addition, a representative of the group must be appointed.</p>
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		<p>i. Additional information that must be provided includes:</p> <ul style="list-style-type: none"> • surname, first name, place of residence or company name, registered office and address of the person(s) subject to reporting requirements, including the name of the relevant contact person; • in the case of an indirect acquisition, the type of indirect acquisition must be disclosed as well as the person or legal entity who holds the reportable instruments directly on behalf of the beneficial owner; • the type and number of all equity securities and financial instruments held by the person or legal entity subject to reporting requirements or the relevant group; • the designation of the type of transaction (eg, purchase or sale); • the transaction details, in particular the number of voting rights concerned; and • information as to the derivative instrument such as the identity of the issuer of such instrument, the underlying assets and the exercise price and exercise period, unless the derivative instrument has a separate ISIN.
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<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. The disclosure obligation is with the beneficial owner, unless the direct/legal owner is authorised to exercise the respective voting rights at their own discretion (which is typically not the case).</p> <p>b. As pointed out under (a), in the typical scenario, the beneficial owner is subject to the reporting requirements. The ultimate beneficial owner must be disclosed. In addition, the person/legal entity holding the reportable instruments directly must be disclosed as well.</p> <p>c. YES, the parties acting in concert are subject to the reporting obligations. The members of the group are jointly responsible for fulfilling the group's reporting obligations.</p> <p>d. Other persons who may be required to report: Under certain circumstances, banks, securities dealers and asset managers may also be obliged to report such transactions (other than proprietary transactions). This is the case if, within the scope of their powers, they can exercise the voting rights attached to their clients' equity securities at their own discretion.</p>
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<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES, all asset managers are subject to standard disclosure requirements; there are no simplified or short-form notifications. Note that there are specific rules for fund management companies (ie, the respective purchase and sales positions are aggregated across all funds managed by a fund management company).</p> <p>b. YES, also passive investors are subject to reporting requirements. See (a) above.</p> <p>c. There is no short form disclosure once a disclosure obligation is triggered. However, the information subject to disclosure may vary depending on the type of transaction. The following (limited) exemptions apply:</p> <ul style="list-style-type: none"> • transactions that exceed the relevant thresholds but are reversed by corresponding counter-transactions within the same trading day (intraday transactions) are generally exempt from the reporting requirement (so called intraday exemption). • banks and securities firms are exempt from reporting requirements for trading portfolios of up to five per cent and for portfolios held as part of securities lending, transfers of title for security purposes and similar transactions of up to five per cent, as well as for portfolios held for the settlement of transactions for a maximum of three trading days, provided that the total portfolio does not exceed ten per cent of the voting rights and the bank or securities firm in question has no intention of exercising the voting rights or otherwise influencing the issuer. • upon request, the disclosure office of the relevant stock exchange may grant exemptions from the reporting obligation for important reasons. The request must, however, be submitted prior to the entering into the transaction that is or may actually be subject to reporting.
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES, there are triggers that make it necessary to revise a disclosure statement that has already been submitted.</p> <p>b. Since there are different thresholds that trigger disclosure obligations, persons or legal entities need to disclose their shareholdings each time they reach, exceed or fall below one of the thresholds set out in law. Therefore, there is no set amount by which a participation must increase or decrease to trigger a mandatory revision.</p> <p>c. Since the purpose or intention of the shareholder is not relevant for determining whether any disclosure requirements are triggered, there is no obligation to revise the disclosure in the event of any changes to such intentions. As an exemption to this rule, the conclusion of a new (formal or informal) shareholders' agreement triggers disclosure requirements.</p> <p>d. In principle, any change to the facts originally reported requires a revision of the disclosure. This includes, for example:</p> <ul style="list-style-type: none"> • In the case of indirect shareholdings, changes as to the beneficial owner or the person/entity holding the reportable instrument directly must be reported. • If reportable instruments are held by a group acting in concert and a threshold of three per cent or higher has already been reached and disclosure has been made, any subsequent changes to the composition of the group must be reported, even if the group's total holdings do not reach, exceed or fall below a threshold as a result. This applies to both joining and leaving group members. Furthermore, the dissolution of the group must also be reported. If the former group members individually reach or exceed thresholds, they are then individually required to disclose their shareholdings. • If reportable derivatives are held and replaced upon expiry, the report already submitted must also be updated, as, among others, the maturity date and/or the security identification numbers will change.
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		<p>e. The disclosure and reporting of any changes are subject to the same deadlines as the original disclosures.</p> <p>f. In principle, there is no moratorium on further acquisitions until or for some period after the disclosure is made. Additional disclosures are required as soon as the next threshold is reached or exceeded or in case a shareholder (or a group of shareholders acting in concert) falls below a threshold.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES, Swiss statutory law provides for criminal sanctions (for the individuals involved, not the legal entity) in the event of violations of disclosure requirements. Any intentional violation of the reporting obligation may be punished with a fine of up to CHF 10m, while a negligent violation may be punished with a fine of up to CHF 100,000. Given that there are penalties for violations of the disclosure requirements, it is advisable to submit a report in case of doubt. There are no penalties for submitting an ‘unnecessary’ report. However, it should be noted that deliberately submitting a false report may, under certain circumstances, constitute a market manipulation, which in turn would result in administrative and criminal sanctions.</p> <p>b. YES, Swiss statutory law provides for regulatory sanctions in the event of violations of disclosure requirements. If there is sufficient evidence of a breach of the reporting requirements, FINMA may suspend the voting rights and associated rights, or prohibit the person concerned to acquire further shares or rights to acquire or dispose of shares in the issuer in question, either directly or indirectly, or by acting in concert with third parties, until the matter has been clarified and the reporting requirements have been fulfilled.</p> <p>c. YES, in addition to criminal and regulatory consequences, a breach of reporting obligations may result in civil liability. If a party has suffered damages as a result of an incorrect or incomplete disclosure, it may be entitled to claim damages (provided all other legal requirements such as a causal link are fulfilled).</p>
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		<p>d. YES, failure to comply with the reporting requirement may result in the suspension of voting rights and associated rights if ordered so by FINMA. FINMA may also prohibit the acquisition of further reportable instruments. However, Swiss law does not provide for any obligation to divest (except for regulated Swiss entities where such obligation can be ordered by FINMA as a restoration of compliance with Swiss financial market laws if appropriate).</p> <p>e. In the event of violations of disclosure requirements, other shareholders have no individual right to take legal action. According to legal provisions, only the issuer itself and the authorities are entitled to formally report a suspected violation of reporting requirements.</p>
12.	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/ events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/ bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES, Swiss law contains provisions on MTOs for Swiss companies with a (partial) listing in Switzerland and for non-Swiss companies with a (partial) primary listing in Switzerland..</p> <p>b. Anyone who acquires equity securities directly, indirectly or by acting in concert with third parties and, together with the securities already held, exceeds the threshold of 33.3 per cent of a target company's voting rights, whether exercisable or not, must make an offer for all of the target's listed equity securities. Issuers may raise this threshold to 49 per cent of the voting rights by introducing a respective provision into their articles of association.</p> <p>c. As a general rule, the provisions on mandatory tender offers only apply in cases where the acquirer holds equity securities exceeding 33.3 per cent of the voting rights. Pursuant to Swiss statutory law, equity securities are defined as shares, participation certificates and profit participation certificates. Accordingly, purchase positions in derivative instruments are – subject to the abuse of rights – disregarded when determining whether there is an obligation to submit a mandatory takeover offer.</p>

		<p>d. The direct or indirect acquisition of equity securities, whether individually or by acting in concert with other parties, triggers the obligation to submit a mandatory tender offer. Accordingly, the acquisition of beneficial ownership of equity securities triggers a mandatory takeover offer as well if the relevant 33 and a third per cent threshold is exceeded.</p> <p>e. An issuer can opt out of the provisions on MTOs by including a relevant clause in its articles of association (opting out). This clause can be added either before a listing or, by meeting certain requirements, also following the listing by a shareholders' resolution. Additionally, as mentioned above, companies can raise the threshold to 49 per cent of the voting rights by adding a corresponding provision to their articles of association (opting up). In addition, the law provides for a number of exemptions, for example, if the equity instruments are acquired for purposes of restructuring the issuer or the threshold triggering the MTO is exceeded only temporarily.</p> <p>f. The intentional breach of a legally binding obligation to submit a tender offer may be punished with a fine of up to CHF 10m (for the individuals involved, not the legal entity). Any negligent breach of such obligation is subject to a fine of up to CHF 150,000. Any breach of further obligations by an offeror (incorrect or incomplete statements of fact in an offer prospectus) may lead to fines of up to CHF 500,000. In addition, FINMA may suspend the exercise of the voting rights and prohibit the offeror to purchase further equity securities in the target company.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES, there are restrictions regarding the formal pricing of tender offers. For MTOs, the offer price must be at least equal to the higher of the following prices: the stock market price or the highest price paid by the offeror for equity securities of the target company in the last 12 months (so-called minimum price rule). As a general rule, the stock market price corresponds to the volume-weighted average market price of the last 60 trading days prior to launching the offer. In case of illiquid securities, where the volume-weighted average market price cannot be determined or is meaningless, the offeror will have to establish the market price by way of a valuation report prepared by an audit firm mandated for the purposes of confirming the conformity of the offer with Swiss takeover law and regulations.</p> <p>b. YES, an MTO can be subject to conditions but only for important reasons, for example, merger clearance and other regulatory approval or the absence of a judgment prohibiting the completion of the MTO. Conversely, a minimum tender threshold – or a material adverse change – condition would not be permissible.</p> <p>c. NO, the consideration can also be paid in exchange for shares in the offeror (including treasury shares) or another company or bonds, options and units in investment funds. However, in such case, there must be a cash alternative available. It is noteworthy that the financing of the takeover offer must be in place and that an audit firm must certify that such financing is available.</p> <p>d. The principle of equal treatment stipulates that the offer must cover all categories of listed equity securities of the target and that an appropriate relationship must be maintained between the prices offered for the various categories of equity securities and financial instruments.</p>
<p>14.</p>	<p>Is there a ‘put up or shut up’ mechanism in your jurisdiction?</p>	<p>YES, Swiss takeover law contains a provision stating that if a person or legal entity publicly announces that they are considering making a public offer (potential offeror), the Swiss Takeover Board may require that person to either publish an offer for the target within a certain deadline or publicly declare that they will neither make an offer nor exceed a participation threshold that would trigger the obligation to make an offer within six months.</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for the United Kingdom

	Which jurisdiction are you covering?	The United Kingdom
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p><i>For companies with shares admitted to trading on a UK regulated market</i></p> <p>Regardless of whether a takeover bid is in progress, any shareholder whose total interest in a company surpasses three per cent is required to notify the company. Further notifications must also be made each time their holding reaches, crosses above, or falls below each additional one per cent threshold.</p> <p><i>For non-UK incorporated issuers</i></p> <p>For companies incorporated outside the UK but listed on UK markets, there is a mandatory disclosure obligation at five per cent, ten per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent of total voting rights.</p>

<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>a. Disclosure must be done within two trading days, in accordance with the UK Disclosure Guidance and Transparency Rules (DTRs). Once the company receives this notification, it must publicly disclose the information – including the name of the acquiring party – by the end of the following trading day. Note that if the entity’s registered office is outside of the UK, then it is not subject to the two trading day requirement – it needs to follow the rules of its ‘home state’.</p> <p>Under Rule 9 of the Takeover Code, a mandatory offer is required when a person or concert party acquires 30 per cent or more of the voting rights in a company subject to the Code. Under Rule 8 of the Takeover Code, during an offer period,²⁹ holders of one per cent or more must disclose dealings by 12 noon (UK time) on the business day following the date of the transaction.</p> <p>b. Under DTR 5, the shareholder must submit a TR-1 form to the company and the Financial Conduct Authority (FCA). The company must then announce the information to the market via a Regulatory Information Service (RIS) by the end of the next trading day after receiving the TR-1. The disclosure includes details such as the identity of the shareholder, the nature of the holding (direct/indirect) and the exact percentage held.</p> <p>Under the Takeover Code, disclosures during an offer period must be made in a public dealing disclosure and filed via a RIS and also sent to the Takeover Panel.</p>
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²⁹ An ‘offer period’ begins when an announcement is made of a possible or firm intention to make an offer under Rule 2.7 or 2.4 or the board of the target company is approached with a possible offer. The ‘offer period’ ends when the offer lapses, is withdrawn or becomes unconditional in all respects.

<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/ threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>a. YES</p> <p>b. NO</p> <p>c. YES, if yes must such instruments be exercisable/ convertible within a time period? DTR 5.3.1R does not provide a specific time frame, but requires that there is certainty and enforceability of the right to acquire voting shares.</p> <p>d. YES</p> <p>e. YES</p> <p>a. Under DTR 5.1.2R, voting shares are the primary instruments that count towards disclosure thresholds, as they confer control through voting rights in the company.</p> <p>b. Under DTR 5.1.1R(3)(a), non-voting shares are excluded from disclosure calculations, unless they are convertible into voting shares, in which case they may be captured under derivative rules.</p> <p>c. Under DTR 5.3.1R(1)(a), instruments that give an unconditional right to acquire voting shares are included.</p> <p>d. Under DTR 5.3.1R(1)(b), instruments that do not result in physical settlement but provide economic exposure equivalent to holding voting shares – such as contracts for difference (CFDs) or total return swaps – are included if they give access to or influence over voting rights.</p> <p>e. Under DTR 5.2.1R, if voting rights are transferred (eg, through securities lending), the borrower must disclose the position if thresholds are crossed, even if they do not have an economic interest in the shares.</p> <p>f. The disclosure obligation includes financial instruments that result in the acquisition of shares or voting rights, per the DTR such as via securities lending arrangements, synthetic positions via derivatives, convertible debt or rights issues or warrants.</p>
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4.	<p>What transactions/events/ activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. YES</p> <p>e. YES</p> <p>f. YES</p> <p>a. N/A</p> <p>b. Under the Takeover Code, holdings of persons acting in concert are aggregated to assess whether the 30 per cent mandatory offer threshold has been crossed. Even if no individual reaches 30 per cent, the group may trigger an offer obligation. Dealings by concert parties must also be disclosed during the offer period³⁰ under Rule 8.</p> <p>c. Under DTR 5, securities lending triggers disclosure only if voting rights transfer to the borrower and thresholds are crossed. If voting rights are retained by the lender, no disclosure arises. Short positions alone are not disclosable under DTR 5 but must be reported under the Short Selling Regulation – privately at 0.1 per cent and publicly at 0.5 per cent of issued share capital.</p> <p>d. Sales of shares can trigger disclosure where they result in a person falling below a threshold set out in DTR 5, for example moving from four per cent to 2.9 per cent. Although sales do not trigger a mandatory offer under the Takeover Code, they may affect the calculation of voting rights or whether a person remains above or below the control threshold.</p> <p>e. Passive changes in voting power, like those from share buybacks, must be disclosed under DTR 5, even without an acquisition if they reach, exceeds or falls below a threshold. However, under Takeover Code Rule 9.1(b), a mandatory offer isn't triggered by a passive increase alone – only by a subsequent active acquisition that crosses the 30 per cent threshold.</p>
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³⁰ Please see footnote 1 for a definition of 'offer period'.

		<p>Derivatives and financial instruments with similar economic effects (eg, contracts for difference, options) relating to shares with voting rights are disclosable under DTR 5.3. Proxy voting rights or agreements that allow control or influence over voting may also trigger disclosure. Additionally, transfers of control over entities holding shares can require disclosure depending on the voting rights effectively acquired.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>In the UK, the concept of beneficial ownership that triggers disclosure obligations is defined by reference to voting rights, not merely economic interests. The primary source of these rules is DTR 5, which applies to shareholders of companies with shares admitted to trading on a UK-regulated market. The definition is also relevant in the context of Rule 9 of the Takeover Code, which governs the obligation to make a mandatory tender offer when control is acquired.</p> <p>In the UK, the answer is (e): any of (a), (b), or (c) may be relevant, but only to the extent that they confer, or relate to, voting rights (either held outright or indirectly through agreements or financial instruments). This reflects the fact that DTR 5 is concerned solely with voting power, and not with mere economic exposure or custodial arrangements absent voting influence.</p> <p>Other mechanisms can also give rise to a disclosure obligation, particularly under DTR 5.3, which captures financial instruments with similar economic effect to holding shares and that provide access to voting rights. This includes derivatives, options, and CFDs,³¹ provided they confer a right to acquire, or otherwise access, voting shares. Moreover, proxy voting arrangements or agreements to vote in a particular way may also amount to holding indirect voting rights depending on the degree of control involved.</p>

31 A CFD is an agreement between two parties to exchange the difference in the value of an asset between the time the contract is opened and closed. It is cash-settled and does not involve delivery of the underlying asset.

<p>6.</p>	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>In the UK, the concept of acting in concert is a central feature of the Takeover Code, particularly in determining whether a mandatory tender offer (MTO) under Rule 9 has been triggered.</p> <p>a. Under the Code, acting in concert refers to persons who, pursuant to an agreement or understanding (whether formal or informal), cooperate to obtain or consolidate control of a company, or to frustrate the successful outcome of an offer. There is also a list of ‘presumed concert parties’, such as directors of the same company and group companies. These can be rebutted.</p> <p>b. A formal agreement is not always required. The Takeover Code recognises both explicit agreements and tacit understandings. However, mere ‘parallel action’ or similar behaviour without evidence of cooperation or understanding is generally not sufficient to establish acting in concert.</p> <p>Ultimately, the question of whether parties are acting in concert is a factual assessment.</p>
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<p>7.</p>	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. NO</p> <p>e. YES</p> <p>f. YES</p> <p>g. YES</p> <p>h. YES</p> <p>d. The date of acquisition is often required for some filings, but the price paid is generally not disclosed under DTR 5. During an offer period, Rule 8 of the Takeover Code requires disclosure of dealings, including dates and prices.</p> <p>e. Purpose is not required under routine disclosure rules. However, under the Takeover Code, a declaration of intent is required when announcing a firm intention to make an offer.</p> <p>g. While a description is required, the actual agreements do not need to be filed with the FCA or made public under DTR 5.</p> <p>h. During an offer period, the Takeover Code requires disclosure of concert parties, especially if their combined holdings trigger a mandatory offer or influence control.</p> <p>i. Disclosure of changes in holdings (crossing thresholds), disclosure of short positions under the Short Selling Regulation and disclosure of indirect holdings or holdings through derivatives if they confer voting rights.</p>
<p>8.</p>	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. YES</p> <p>d. Persons with indirect control (through derivatives or financial instruments conferring voting rights), custodians or nominees and short position holders.</p>

<p>9.</p>	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>a. YES</p> <p>b. YES</p> <p>a. Under DTR 5, asset managers who have voting rights or economic interests must disclose when thresholds are crossed. They can often use short-form notifications if they hold shares on behalf of multiple clients (eg, as nominees), but each beneficial owner's position should be aggregated or disclosed properly. However, specific exemptions apply if the asset manager does not have control over voting rights.</p> <p>b. Passive investors must disclose under DTR 5 if their holdings cross thresholds. The disclosure obligation is based on beneficial ownership, regardless of intent or activity. They have no short form exemption.</p> <p>c. Central securities depositories (CSDs), often have reporting obligations but may not have to disclose individually if they do not control voting rights.</p>
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<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>a. YES</p> <p>b. DTR 5.1.2 states that, in respect of UK issuers, notification is required when a person's holding reaches, exceeds, or falls below any of the thresholds: a one per cent increase/decrease beyond three per cent. For non-UK issuers, the disclosure thresholds are five per cent, ten per cent, and so forth, increasing by five per cent.</p> <p>c. DTR 5 states that a change in intent does not trigger a disclosure. However, under the Takeover Code, certain intentions, such as plans for the target's business, employees and assets; financing arrangements; or any agreements or arrangements with shareholders or directors must be disclosed if an offer is announced.</p> <p>d. Effectively, anything triggers revision of the disclosure statement if it will increase or decrease the voting rights of the direct holding with regards to the threshold. This includes passive changes and transfer of control. Also, DTR 5.3 states that acquiring or disposing of instruments with similar economic effect triggers a revision of the disclosure statement.</p> <p>e. DTR 5.8.3 states that, for UK issuers notification must be made as soon as possible, and no later than two trading days after either the transaction date or the date the person becomes aware that a threshold was crossed. If non-UK issuer, then home state rules apply.</p> <p>f. There is no moratorium or cooling-off period under DTR 5. Investors can continue acquiring or disposing shares even after crossing thresholds, as long as disclosures are made in time. However, under Rule 9 of the Takeover Code, if a 30 per cent threshold is triggered, the acquirer must make a mandatory offer, and further acquisitions may be subject to restrictions.</p>
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<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <p>a. Criminal sanctions?</p> <p>b. Regulatory sanctions?</p> <p>c. Damages?</p> <p>d. Equitable relief (such as loss of voting rights or requirement to divest)?</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules?</p>	<p>a. YES</p> <p>b. YES</p> <p>c. NO</p> <p>d. YES</p> <p>e. NO</p> <p>a. Under the Financial Services and Markets Act 2000, a failure to disclose under DTR 5 can, in theory, lead to criminal prosecution, though this is rare. Imprisonment is more likely to apply in more serious cases of market abuse, not ordinary late filing.</p> <p>b. The FCA can impose administrative sanctions, including fines, public censure and suspension of listing/trading. The Takeover Code allows the panel to issue public criticism, private warnings and sanctions affecting participation in future takeovers.</p> <p>c. There is no automatic right to damages under DTR 5 or the Takeover Code for breach of disclosure rules. This would need to be pursued under general contract or tort law; however, regular rules of causation and loss would apply – something relatively difficult to prove relating to disclosure.</p> <p>d. Section 794 Companies Act 2006 permits the ability to restrict shareholder rights. Section 797 permits application to the High Court and includes restricting voting (disenfranchising), transfer and dividend rights.</p> <p>e. There is no direct private right of action to enforce DTR 5 or the Takeover Code, only regulators can directly enforce the regulations. However, the aforementioned equitable remedies are available via court application.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/securities triggers MTO?</p> <p>d. What transactions/events/activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>a. YES</p> <p>b. YES</p> <p>e. YES</p> <p>b. The MTO is triggered when the 30 per cent threshold is triggered. Rule 9.1 of the Takeover Code requires a person to make a mandatory offer when either they acquire an interest in shares carrying 30 per cent or more of the voting rights in a company or if they already hold between 30 per cent and 50 per cent and acquire any additional voting rights.</p> <p>c. It applies to shares carrying voting right, which includes equity shares, instruments, convertible into voting shares (if converted) and derivatives or CFDs.</p> <p>d. Direct and indirect acquisition and acting in concert. Passive increases do not trigger the MTO alone, but a subsequent small acquisition does.</p> <p>e. Whitewash waivers (the requirement for the mandatory offer is waived by approval by independent target shareholders), dispensations (for restructuring or insolvency procedures). Opting-up and opting-out is not allowed as the 30 per cent rule is strict unless waived.</p> <p>f. Voting rights are suspended, the Takeover Panel may either request the person to make an MTO or dispose of shares to go below 30 per cent, court enforcement via section 996 of CA 2006.</p>
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<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>a. YES</p> <p>b. NO</p> <p>c. NO</p> <p>a. Rule 9.5 enforces a minimum offer price. The MTO must be made at the highest price paid by the bidder (or any concert party) for shares in the target in the 12 months prior to the announcement of the offer.</p> <p>b. MTOs under Rule 9 are generally unconditional. The Takeover Panel does not permit subjective conditions in MTOs (in voluntary offers it is permitted).</p> <p>c. Rule 9.5 permits an offer to be structured for cash or securities. However, if the bidder (or a concert party) has acquired any shares for cash in the 12 months before the MTO, the offer must include a cash alternative at no less than the highest cash price paid.</p> <p>d. All shareholders must be treated equally in terms of price and conditions, the Panel must be consulted if any doubt exists about MTO triggers or terms, and strict deadlines apply once the offer is announced.</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>YES. Under Rule 2.6(a) of the Takeover Code, when a potential offeror is publicly identified, they must, within 28 days of that identification, either 'Put up' – announce a firm intention to make an offer (under Rule 2.7), or 'Shut up' – confirm they do not intend to make an offer, in which case they are barred from bidding again for six months (except under certain conditions).</p>

Survey on Stake-building Disclosure and Mandatory Tender Offers

Questionnaire for the United States

	Which jurisdiction are you covering?	The United States
1.	At what level(s)/threshold(s) is/are disclosure of stake required (specified, if possible, as percentage of outstanding equity)?	<p>Short answer: five per cent of the outstanding voting equity.</p> <p>Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, as amended (the 'Exchange Act'), require that direct or indirect beneficial owners of more than five per cent of a class of voting equity securities registered under the Exchange Act (essentially shares in a public company) report their beneficial ownership on a Schedule 13D or, if eligible, a short-form Schedule 13G. See the response to Question 5 for the definition of 'beneficial ownership'.</p> <p>Other early warning filings may include antitrust disclosures, money manager filings and short-swing profit filings.</p> <p>Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the 'HSR Act'), filings must be made with the government and provided to the issuer when ownership in a company exceeds specified thresholds (the lowest currently being \$126.4m, indexed to inflation). While this is an antitrust requirement, depending on a company's size this will often provide the earliest warning to a company that someone is building a stake. Significant money managers are also required to disclose their holdings annually (although they might on application be granted confidentiality). Rule 13f-1 under the Exchange Act requires that a Form 13F be filed with the Securities and Exchange Commission (the 'SEC') by any 'institutional investment manager' that exercises investment discretion over one or more accounts holding equity securities that are admitted for trading on a US securities exchange and have an aggregate fair market value as of the last trading day of any month during a calendar year of at least \$100m. This filing obligation does not impose a minimum percentage</p>

		<p>requirement in respect of a particular class of equity securities. In addition, under Rule 13h-1, so-called 'large traders' that purchase or sell listed securities in an aggregate amount equal to or greater than: (1) during any calendar day either two million shares or shares with a fair market value of \$20m; or (2) during any calendar month either 20 million shares or shares with a fair market value of \$200m must file a non-public Form 13H with the SEC (x) promptly after first effecting aggregate transactions equal to or greater than the relevant threshold, (y) within 45 days after the end of each full calendar year and (z) promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason.</p> <p>Section 16(a) of the Exchange Act requires insiders of an issuer with equity securities registered under the Exchange Act (other than issuers that qualify as 'foreign private issuers') to report their ownership of such equity securities and any transactions in such securities. For purposes of section 16, an 'insider' is any officer or director of the issuer and any person who beneficially owns, directly or indirectly, more than ten per cent of any class of equity security. Section 16(b) also requires disgorgement to the issuer of the positive difference in the price per share for certain acquisitions and dispositions made within six months of each other.</p> <p>Given the nature of the Rule 13f-1, Rule 13h-1 and section 16 filings, the subsequent responses do not discuss these further.</p>
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<p>2.</p>	<p>How soon after crossing the level/threshold and in what form is the disclosure required to be made?</p> <p>a. Deadline for disclosure?</p> <p>b. Form of disclosure: press release, form filing, insider report, etc?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <ul style="list-style-type: none"> • Schedule 13D (generally for acquirers with active intent) <ol style="list-style-type: none"> 1. Five business days after acquiring beneficial ownership of more than five per cent of a class of registered voting equity securities. 2. The Schedule 13D is filed with the SEC on its website and is immediately accessible by the public. • Schedule 13G (short-form) <ol style="list-style-type: none"> 1. Qualified institutional investors (Rule 13d-1(b)): either: (1) 45 days after the calendar quarter-end in which beneficial ownership exceeds five per cent of a class of registered voting equity securities; or (2) five business days after the month-end in which beneficial ownership exceeds ten per cent of a class of registered voting equity securities. Ownership is only measured as of calendar quarter-ends or calendar month-ends, as applicable. 2. Passive investors (Rule 13d-1(c)): five business days after the date at which beneficial ownership exceeds five per cent of a class of registered voting equity securities. 3. Exempt investors (Rule 13d-1(d) (eg, founders or pre-IPO investors)): 45 days after the calendar quarter-end in which beneficial ownership exceeds five per cent of a class of registered voting equity securities. Ownership is only measured as of calendar quarter-ends. 4. See also Question 9 below for a discussion on the various classes of Schedule 13G filers. 5. In all cases, the Schedule 13G is filed with the SEC on its website and is immediately accessible by the public.
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<p>3.</p>	<p>What type of instruments/ securities are counted towards disclosure level/threshold?</p> <p>a. Voting shares?</p> <p>b. Non-voting shares?</p> <p>c. Derivative instruments giving a right to acquire share (such as options or convertible instruments; if YES: must such instruments be exercisable/convertible within a time period?)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)?</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)</p> <p>f. Other type of instruments?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/ Schedule 13G):</p> <p>a. Voting shares? YES</p> <p>b. Non-voting shares? NO (not for determining whether a filing is required but may need to be disclosed if there is a filing requirement); see Question 7.</p> <p>c. Derivative instruments giving a right to acquire shares (such as options or convertible instruments)? YES, if either: (1) such instruments provide the holder with the right to acquire shares (or vote such shares) within 60 days; or (2) such instruments provide the holder with the right to acquire shares (or vote such shares) and the holder acquired the instruments with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, regardless of when the right is exercisable. (Note that, as with non-voting shares, other derivative instruments may also need to be disclosed if a filing is made.)</p> <p>d. Derivative instruments giving not a right to acquire shares physically but giving the economic equivalent (such as total return swaps or contract of difference)? Generally NO, unless: (1) such instruments otherwise provide the holder with beneficial ownership (see Questions 1 and 5) of shares or the right to acquire such beneficial ownership as outlined in Question 3(c); or (2) such instruments are acquired with the purpose or effect of divesting its holder of beneficial ownership of shares or preventing the vesting of that beneficial ownership as part of a plan or scheme to evade the section 13 reporting requirements. (Note that such derivative instruments may also need to be disclosed.)</p> <p>e. Instruments which give right to vote but no economic benefit (such as borrow shares)? YES</p> <p>f. Other type of instruments? N/A</p>
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<p>4.</p>	<p>What transactions/events/activities trigger the disclosure?</p> <p>a. Acquisition of beneficial ownership?</p> <p>b. Acting in concert or forming a group in relation to the securities in question?</p> <p>c. Securities lending, short positions etc?</p> <p>d. Sale?</p> <p>e. Mere passive reach of threshold (such as a stock buyback)?</p> <p>f. Other?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p>a. Acquisition of beneficial ownership? YES</p> <p>b. Acting in concert or forming a group in relation to the securities in question? YES</p> <p>c. Securities lending, short positions etc? NO, but see Question 10.</p> <p>d. Sale? NO, but see Question 10.</p> <p>e. Mere passive reach of threshold (such as a stock buyback)? YES but not immediately. If an individual or entity passively crosses the five per cent beneficial ownership threshold – such as through a stock buyback that reduces the total number of outstanding shares – this triggers a disclosure obligation on Schedule 13G under Rule 13d-1(d) within 45 days after the end of the calendar quarter in which the threshold was crossed.</p>
<p>5.</p>	<p>What is included in the definition of beneficial ownership that triggers disclosure?</p> <p>a. Economic interest?</p> <p>b. Power to direct the voting of the securities in question?</p> <p>c. Power to direct the holding or disposition of the securities in question?</p> <p>d. All of (a), (b) and (c)?</p> <p>e. Any of (a), (b) or (c)?</p> <p>f. Other?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p>Under Rule 13d-3, ‘beneficial ownership’ of a security means that a person has or shares, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, voting power (which includes the power to vote or direct the voting of a security) and/or investment power (which includes the power to dispose of or direct the disposition of a security). In addition, as described in Question 3c above, beneficial ownership includes the right to acquire voting or investment power in certain circumstances.</p>

6.	<p>What constitutes acting in concert or forming a group?</p> <p>a. What constitutes acting in concert/forming a group?</p> <p>b. Does there have to be a formal agreement/ arrangement in place or, for example, is ‘parallel action’ sufficient?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p>Under section 13 of the Exchange Act, a group is formed when two or more persons act together for the purpose of acquiring, holding, voting, or disposing of securities. No formal agreement is required and parallel action (with a common purpose) can be sufficient.</p>
7.	<p>What disclosure is required?</p> <p>a. Percentage of equity owned?</p> <p>b. Number and type of instrument?</p> <p>c. Source of funds?</p> <p>d. Details on acquisitions (such as date and price)?</p> <p>e. Purpose/declaration of intent?</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer?</p> <p>g. Filing of agreements and arrangements described in (f) above?</p> <p>h. Concert parties (members of group)?</p> <p>i. Other?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p><i>Schedule 13D</i></p> <p>a. Percentage of equity owned? YES</p> <p>b. Number and type of instrument? YES</p> <p>c. Source of funds? YES</p> <p>d. Details on acquisitions (such as date and price)? YES</p> <p>e. Purpose/declaration of intent? YES. The reporting person(s) must state the purpose(s) of the acquisition of the issuer’s securities and describe any plans or proposals which the reporting person(s) may have to, among other things, make any additional acquisitions or dispositions of the issuer’s securities, liquidate the issuer, sell its assets, merge it with any other persons, change its directors or management, change its capitalisation or dividend policy, change its organisational documents, take other actions that may impede an acquisition of control of the issuer, cause a delisting or make any other major change in its business or corporate structure. Note that a change in purpose can constitute a material change requiring an updated 13D filing. See the response to Question 10.</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer? YES</p> <p>g. Filing of agreements and arrangements described in (f) above? YES</p>

		<p>h. Concert parties (members of group)? YES</p> <p>i. Other?</p> <ul style="list-style-type: none"> • Details on the reporting person(s), including business address/residence, present occupation/employment, convictions in criminal proceedings in past five years, civil proceedings relating to securities laws in the last five years, citizenship and similar information for each partner of a reporting person (if a partnership) or each officer and director of the reporting person(s) (if a corporation). • If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five per cent of the class, such person should be identified. <p>Schedule 13G</p> <p>a. Percentage of equity owned? YES</p> <p>b. Number and type of instrument? YES</p> <p>c. Source of funds? NO</p> <p>d. Details on acquisitions (such as date and price)? NO</p> <p>e. Purpose/declaration of intent? NO (other than to certify as to passive intent, in the case of filers under Rule 13d-1(b) or 13d-1(c))</p> <p>f. Description of relevant agreements and arrangements regarding the securities in question or with the issuer? NO</p> <p>g. Filing of agreements and arrangements described in (f) above? NO</p> <p>h. Concert parties (members of group)? YES</p>
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		<p>i. Other? If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five per cent of the class, such person should be identified.</p>
8.	<p>Who has to disclose?</p> <p>a. Direct/legal owner</p> <p>b. beneficial owner</p> <p>c. Parties acting in concert</p> <p>d. Other?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p>a. Direct/legal owner YES</p> <p>b. Beneficial owner YES</p> <p>c. Parties acting in concert YES (to the extent the group is above the beneficial ownership threshold)</p> <p>d. Other? NO</p>
9.	<p>Are there exceptions/short form of disclosure for certain type of investors?</p> <p>a. Must money/asset managers disclose their positions? if YES: can they use a short form?</p> <p>b. Must passive Investors disclose their positions? if YES: can they use a short form?</p> <p>c. Other exceptions/short form of disclosure?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p>Short-form – and periodic rather than current – section 13 disclosure on Schedule 13G rather than Schedule 13D is available for three types of investors:</p> <p>1. Qualified institutional investors (Rule 13d-1(b)): Specified classes of institutional investors that acquired and hold their securities in the ordinary course of business and without a purpose or effect or in connection with a transaction having a purpose or effect, of changing or influencing control of the issuer.</p> <p>2. Passive investors (Rule 13d-1(c)): Persons who beneficially own less than 20 per cent of a class of an issuer’s registered equity securities and acquired and hold their securities without a purpose or effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.</p>

		<p>3. Exempt investors (Rule 13d-1(d)): Persons who: (1) acquired all their securities prior to the issuer registering under the Exchange Act and who do not, subsequent to such registration, acquire additional securities of the same class which, together with all other acquisitions by that person of securities of the same class during the preceding 12 months, exceed two per cent of such class; or (2) did not acquire more than two per cent of the relevant class of securities in any 12-month period.</p>
<p>10.</p>	<p>What is the trigger for revision of the disclosure statement?</p> <p>a. Any trigger for revision of the disclosure statement?</p> <p>b. If the trigger is increase in ownership, how much increase triggers a revision?</p> <p>c. If the trigger is a change in intent/purpose: can a change in intent/purpose be revised or trigger a disclosure requirement without further purchases?</p> <p>d. Any other triggers for a revision requirement?</p> <p>e. How soon must the revision be filed?</p> <p>f. Any moratorium on further acquisitions until (or for some period after) the disclosure is made?</p>	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <p><i>Schedule 13D</i></p> <p>a. YES, following any material change in the information disclosed in, or required to be disclosed in, a Schedule 13D.</p> <p>b. Amendment obligations include (but are not limited to) a ‘material’ change in ownership, which is presumptively one per cent of the total class of securities.</p> <p>c. Amendment obligations include (but are not limited to) a change in investment intent (ie, any material change in plans or proposals relating to the items described in Item 4 of Schedule 13D).</p> <p>d. Any material change in the information disclosed in, or required to be disclosed in, a Schedule 13D – in addition to a change in ownership or investment intent, this includes entry into any agreements relating to the securities.</p> <p>e. Two business days.</p> <p>f. When switching from a Schedule 13G to a Schedule 13D, a filer may not acquire shares until 10 days after the filing of the Schedule 13D.</p>

		<p><i>Schedule 13G</i></p> <p>QUALIFIED INSTITUTIONAL INVESTORS</p> <ul style="list-style-type: none"> a. YES, following certain changes in ownership (or ceasing to have a passive investment intent). b. Either: (1) a material change in ownership, which is presumptively one per cent of the total class of securities; (2) an acquisition that results in ownership above ten per cent; or (3) once above ten per cent, an acquisition or disposition that results in a change in ownership of at least five per cent. c. If a change in investment intent from passive to non-passive occurs, then the filer must instead file on Schedule 13D. d. N/A e. Either: (1) 45 days after the calendar quarter-end in which a material change occurred; or (2) five business days after the month-end in which beneficial ownership of a class of equity securities exceeds ten per cent or, thereafter, a five per cent increase or decrease in beneficial ownership of a class of equity securities occurred. In the event of a change in investment intent, a Schedule 13D must be filed within five business days. f. When switching from a Schedule 13G to Schedule 13D, a filer may not acquire shares until 10 days after the filing of the Schedule 13D.
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		<p>PASSIVE INVESTORS</p> <ul style="list-style-type: none"> a. YES, following certain changes in ownership (or ceasing to have a passive investment intent). b. Either: (1) a material change in ownership, which is presumptively one per cent of the total class of securities; (2) an acquisition that results in ownership above ten per cent; or (3) once above ten per cent, an acquisition or disposition that results in a change in ownership of at least five per cent. If beneficial ownership equals or exceeds 20 per cent, then the filer must instead file on Schedule 13D. c. If a change in investment intent from passive to non-passive occurs, then the filer must instead file on Schedule 13D. d. N/A e. Either: (1) 45 days after the calendar quarter-end in which a material change occurred; or (2) two business days after beneficial ownership of a class of equity securities exceeds ten per cent or, thereafter, a five per cent increase or decrease in beneficial ownership occurs. In the event of a change in investment intent or beneficial ownership reaching or exceeding 20 per cent, a Schedule 13D must be filed within five business days. f. When switching from a Schedule 13G to Schedule 13D, a filer may not acquire shares until 10 days after the filing of the Schedule 13D. <p>EXEMPT INVESTORS</p> <ul style="list-style-type: none"> a. YES, following certain changes in ownership. b. A material change in ownership, which is presumptively one per cent of the total class of securities. c. N/A
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		<ul style="list-style-type: none"> d. An acquisition of beneficial ownership of more than two per cent in any 12-month period would require an amended Schedule 13G (if eligible as a qualified institutional investor or a passive investor) or a new Schedule 13D. e. 45 days after the calendar quarter-end in which a material change occurred. In the event of an acquisition of beneficial ownership of more than two per cent in any 12-month period, an amended Schedule 13G within the deadlines set forth above for new Schedule 13G filings for qualified institutional investors or passive investors (if eligible as a qualified institutional investor or a passive investor, respectively) or a new Schedule 13D within five business days. f. When switching from a Schedule 13G to Schedule 13D, a filer may not acquire shares until 10 days after the filing of the Schedule 13D.
<p>11.</p>	<p>In case of violation of stake disclosure requirements: what are the sanctions?</p> <ul style="list-style-type: none"> a. Criminal sanctions? b. Regulatory sanctions? c. Damages? d. Equitable relief (such as loss of voting rights or requirement to divest)? e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules? 	<p>Responses for the following questions relate only to reporting under section 13 (Schedule 13D/Schedule 13G):</p> <ul style="list-style-type: none"> a. Criminal sanctions? Section 32(a) of the Exchange Act provides for criminal penalties, including fines and imprisonment, for wilful violations of the Exchange Act, such as by making material misstatements or omissions in section 13 filings. b. Regulatory sanctions? The SEC can bring civil enforcement actions for material misstatements or omissions in section 13 filings or tardy or delinquent filings, seeking civil penalties, cease-and-desist orders from committing or causing any violations of section 13, and other remedies. c. Damages? There is no private right of action to sue for damages under section 13(d) itself, but note individual shareholders may sue for damages under the Exchange Act's general antifraud provision (section 10(b)) or under section 18(a) of the Exchange Act, which imposes liability for any false or misleading statements in Exchange Act filings. Damages may also be available for fraudulent disclosures in section 13 filings under applicable US state law.

		<p>d. Equitable relief (such as loss of voting rights or requirement to divest)? Courts have granted equitable relief in private actions alleging violations of section 13 if irreparable harm is shown. Such relief most commonly requires corrective disclosure, and some courts have granted relief including prohibitions on voting shares, soliciting proxies and purchasing further shares for a limited time.</p> <p>The SEC has expressed a view that equitable remedies such as rescission and divestiture may be necessary or appropriate to remedy violations of sections 13d and 13e, particularly in cases where the defendant deliberately violated section 13d and the illegal conduct had permitted the defendant to obtain a sufficient number of shares to inhibit competing tender offers or merger proposals, but equitable relief of this nature remains rare. The SEC may seek equitable relief (including disgorgement and injunctive relief, such as prohibitions on serving as an officer or director) in civil proceedings for violations of the Exchange Act. In addition, in connection with its review of a proxy statement or tender offer memorandum, the SEC may delay its review of such disclosure and transaction if it believes a violation of section 13 has occurred in connection with such transaction.</p> <p>e. Is there a private right of action for violation of stake disclosure requirements or does only the regulator have the power to enforce these rules? YES. Both private parties and the regulator may bring action for violation of stake disclosure requirements.</p>
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<p>12.</p>	<p>What level/threshold triggers MTO?</p> <p>a. Has your jurisdiction an MTO requirement? if NO: please specify.</p> <p>b. Level/threshold? if NO: please specify.</p> <p>c. What type of instrument/ securities triggers MTO?</p> <p>d. What transactions/events/ activities trigger MTO (acquisition of beneficial ownership, acting in concert/forming a group with other owners of securities/bidders, etc)?</p> <p>e. Are exceptions, opting-outs/opting-ups available?</p> <p>f. What are the sanctions in case the MTO is not launched/completed?</p>	<p>There are no mandatory tender offer (MTO) requirements in the US under federal securities law, which governs voluntary tender offers. It is possible that MTO obligations could be created under the corporate law in the issuer's place of incorporation but this could be highly unusual. [The respondent authors are not aware of any such MTO obligations on the part of US companies.]</p>
<p>13.</p>	<p>What are the main features of MTOs in your jurisdiction?</p> <p>a. Are there any restrictions on formal bid pricing (eg, pre-bid and post-bid integration rules)?</p> <p>b. Can MTO be subject to conditions?</p> <p>c. Consideration to shareholders: only in cash?</p> <p>d. Other</p>	<p>N/A (there is no MTO regime in the US).</p>
<p>14.</p>	<p>Is there a 'put up or shut up' mechanism in your jurisdiction?</p>	<p>NO.</p>



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