

## Unfriendly Take-over: Attack measures

Overview of attack measures	
<b>Establishment of a share position in the target company</b>	<ul style="list-style-type: none"> <li>• <b>Duty to report</b> for 5, 10, 20, 33, 50 and 66 ½ of voting rights</li> <li>• <b>Undisclosed purchases</b> under the Swiss Stock Exchange Law not permitted</li> <li>• <b>Avoidance of duty to report</b> by using straw men not permitted</li> </ul>
<b>Public tender offer</b>	<ul style="list-style-type: none"> <li>• <b>Offer</b> <ul style="list-style-type: none"> <li>○ investor presents a public tender offer to the shareholders of the target company</li> </ul> </li> <li>• <b>Offer price</b></li> <li>• <b>Offer deadline</b> <ul style="list-style-type: none"> <li>○ waiting period: 10 trading days on stock exchange</li> <li>○ offer period: 20 trading days on stock exchange</li> <li>○ extension: 10 trading days on stock exchange</li> </ul> </li> <li>• <b>Duty of equal treatment</b></li> <li>• <b>Duty to publish a prospectus</b></li> <li>• <b>Additional acquisitions during the tender offer subject to a duty to report</b></li> <li>• <b>Terms</b> <ul style="list-style-type: none"> <li>○ changes to the Article of Association / removal of share disposal restriction</li> <li>○ replacement of the Board of Directors</li> <li>○ competing offers</li> <li>○ offer only valid for minimum proportion of e.g. 66 %</li> <li>○ exclusion of asset erosion</li> <li>○ no significant detrimental implications <ul style="list-style-type: none"> <li>▪ e.g. minimum EBIT</li> <li>▪ consolidated turnover</li> <li>▪ consolidated equity capital</li> </ul> </li> </ul> </li> <li>• <b>Reservation of right of amendment</b> <ul style="list-style-type: none"> <li>○ publication duty</li> </ul> </li> <li>• <b>Revocation</b> <ul style="list-style-type: none"> <li>○ only where reservation of right of revocation specified</li> <li>○ not possible where terms are complied with</li> </ul> </li> </ul>
<b>Law on shares</b>	<ul style="list-style-type: none"> <li>• <b>Request to call general meeting</b> <ul style="list-style-type: none"> <li>○ to Board of Directors</li> <li>○ to courts</li> </ul> </li> <li>• <b>Request for addition to agenda</b></li> </ul>

<b>Battle for votes (known as the "proxy fight")</b>	<ul style="list-style-type: none"> <li>• Preparation of general meeting</li> <li>• Motions in general meeting for investors which are already shareholders</li> <li>• Independent proxies? <ul style="list-style-type: none"> <li>○ custodian-held shares/custodian representative <ul style="list-style-type: none"> <li>▪ lack of information to customers? <ul style="list-style-type: none"> <li>• action according to motions of the Board of Directors?</li> <li>• no representation for which no instructions have been issued by custodial representative?</li> </ul> </li> </ul> </li> <li>○ dispo shares</li> </ul> </li> <li>• Duty of disclosure <ul style="list-style-type: none"> <li>○ equity interests</li> <li>○ agreements with other shareholders (group formation) <ul style="list-style-type: none"> <li>▪ compulsory offer?</li> </ul> </li> </ul> </li> </ul>
<b>Board of Directors</b>	<ul style="list-style-type: none"> <li>• Basis and possibilities <ul style="list-style-type: none"> <li>○ Swiss Code of Obligations</li> <li>○ Articles of Association</li> <li>○ majority voting system</li> </ul> </li> <li>• Composition of voting rights <ul style="list-style-type: none"> <li>○ level of shareholding for hostile parties?</li> <li>○ straw men and de facto control?</li> </ul> </li> </ul>
<b>Protection of minority interests</b>	<ul style="list-style-type: none"> <li>• Rules to combat insider trading</li> <li>• Right to information</li> <li>• Right of inspection</li> <li>• Special examination</li> <li>• Rights to initiate litigation</li> </ul>