



PUBLIC TO PRIVATE TRANSACTIONS

ICAEW CORPORATE FINANCE FACULTY
BEST-PRACTICE GUIDELINE 74

Authors: PricewaterhouseCoopers LLP and Travers Smith LLP



CONTENTS

FOREWORD	1
INTRODUCTION	2
THE PUBLIC TO PRIVATE TRANSACTION PROCESS	4
Overview	4
Phase 1 - Initial considerations	5
Phase 2 - Funding and structure	9
Phase 3 - The approach	11
Phase 4 - Preparing for an offer	16
Phase 5 - Legal documentation and structuring	19
Phase 6 - Offer implementation	25
OTHER CONSIDERATIONS	28
CLOSING REMARKS	31
SCHEDULE 1	32
ABOUT THE AUTHORS	33

Design and layout © 2026 ICAEW

© 2026 PricewaterhouseCoopers LLP and Travers Smith LLP

PricewaterhouseCoopers LLP (PwC) is a limited liability partnership registered in England with registered number OC303525.

Travers Smith LLP is a limited liability partnership registered in England and Wales under number OC336962 and is authorised and regulated by the Solicitors Regulation Authority (SRA number 489478). A list of the members of Travers Smith LLP is open to inspection at its registered office and principal place of business: 3 Stonecutter Street, London EC4A 4AW.

All rights reserved. If you want to reproduce or redistribute any of the material in this publication, you should first get permission in writing from ICAEW.

ICAEW, PricewaterhouseCoopers LLP and Travers Smith LLP will not be liable for any reliance you place on the information in this publication. You should seek independent advice.

FOREWORD



Public to private (PTP) transactions continue to represent a vital and dynamic component of UK and global mergers and acquisitions (M&A) activity. Since the publication of our 2021

guideline, the regulatory environment surrounding UK takeovers has undergone some important changes, prompting this updated best-practice guidance for advisers, boards and investors. Recent reforms to the UK Takeover Code have reshaped the jurisdictional boundaries of the regime, reflecting the Takeover Panel's intention to provide greater clarity and certainty for market participants.

From 3 February 2025, the Code's scope narrowed to focus on companies registered in the UK, Channel Islands or Isle of Man with securities admitted to trading on UK regulated markets or multilateral trading facilities. The longstanding residency test has been abolished, and companies that were UK quoted within the previous two years may still fall within scope. These reforms represent one of the most significant structural changes to the Code in more than a decade.

Alongside jurisdictional reforms, the Panel has also updated several core areas of practice. Amendments to Rule 21 involve governing restrictions on frustrating actions and clarification as to how boards may continue their usual business activities during an offer period. These are supported by new guidance in Practice Statement 34.

Additionally, the definition of acting in concert has been refined, including raising the presumed concertedness threshold between affiliated companies to 30%, thereby codifying long-observed market practice.

The Corporate Finance Faculty has remained deeply engaged in policy development during this period of reform. Our recent work spans capital markets competitiveness, growth company access to equity, the evolution of private share trading platforms, and regulatory reviews affecting dealmaking and investment. Through dialogue with government, regulators and market stakeholders, the faculty continues to champion practical, proportionate frameworks that support transaction efficiency, investor protection and the UK's standing as a leading global financial centre.

The faculty would like to thank Joseph Katz and Jonathan Raggett and their colleagues at PwC, and Spencer Summerfield and Ben Lowen and their colleagues at Travers Smith for drafting this expert publication.

I hope this updated guideline provides clarity and confidence as you navigate the changed takeover landscape and the ongoing momentum behind PTP activity.

David Petrie

Head of Corporate Finance, ICAEW

INTRODUCTION

The purpose of this best-practice guideline is to provide an overview of a PTP transaction in the UK. It is not intended to cover more general considerations relating to public offers, although many of the considerations will be relevant to UK public offers in general. It is intended for corporate finance and legal advisers, as well as principals in private equity and public companies.

This guideline reflects the rules on public takeovers in effect in March 2026.

What is a PTP?

A PTP is an acquisition of a public company by a new company funded by some combination of equity from a private equity fund, infrastructure fund, individuals and/or a family office and, typically, debt finance. PTP transactions are sometimes driven by the management team of the public company, who may, with the permission of the board, approach potential providers of finance to fund a PTP.

As with all public offers, PTPs are high-risk transactions with many strategic and tactical issues, regulatory and legal requirements, and different groups of stakeholders to be managed. These need to be considered from a very early stage, so parties should consult early on with experienced financial and legal advisers.

The regulatory environment

The City Code on Takeovers and Mergers (the Code) will generally apply to an acquisition of a UK listed public company. The Code is based on six General Principles, 38 Rules and a number of Practice Statements, Panel Bulletins and other communications. It is written in a straightforward rather than a technical or detailed legal style and it is of critical importance that the spirit as well as the letter of the Code is followed.

The Panel on Takeovers and Mergers (the Panel) is responsible for issuing and administering the Code and for supervising and regulating takeovers, mergers and other transactions to which the Code applies. The Panel seeks to ensure compliance with the Code through a consensual approach, and in practice

parties to a PTP will consult frequently with the Panel from the very initial stages of the process.

The Panel has legal powers to obtain documents and information and, in certain circumstances and on rare occasions, to seek enforcement of a Panel ruling through the courts. The Panel also has statutory enforcement powers where there has been a breach of the Code, including the power to fine, privately or publicly censure or cold-shoulder parties to a Code transaction (including advisers) and, in certain circumstances, to order the payment of compensation. Cold shouldering is a very serious sanction by the Panel. It is a rare public statement that the offender is not likely to comply with the Code and therefore should not be involved in a Code transaction.

The ongoing requirements of the Listing Rules, Disclosure and Transparency Rules, the Market Abuse Regulation (MAR) and the AIM Rules, as applicable, will also need to be considered.

CASE STUDY: MWB GROUP HOLDINGS PLC (MWB)

In July 2024, the Panel found that three former executives of MWB had, in January 2010, breached Rule 9 of the Code by failing to make a mandatory offer for MWB, having acquired shares which increased the percentage of the shares (and voting rights) held by them and their concert parties above the 30% threshold. Together with seven other individuals (including two lawyers), they were 'cold-shouldered' by the Panel. The Financial Conduct Authority (FCA) subsequently issued a public statement addressed to regulated firms reminding them not to deal with these individuals.

Applicability of the Code

In February 2025, amendments were made to the Code narrowing the scope of the companies to which it applies. Following these amendments, the Code now applies to a company which has its registered offices in the UK, the Channel Islands or the Isle of Man, if it is quoted, or was quoted in the last two years, in the UK, the Channel Islands or the Isle of Man.

Before the amendments, the Code applied to a wider range of companies, including certain companies which had been UK quoted in the last 10 years and certain companies which were quoted on an overseas exchange. There is a transition period in place in respect of such companies until February 2027.

The PTP market

There is a well-established market in UK PTP transactions, with between 15 and 34 completed PTPs each year over the past five years (see Figure 1a), representing a significant proportion of UK public takeover activity. There is an interesting contrast with the initial public offering (IPO) market, which showed strong activity in 2020 and 2021 (see Figure 1b) but a subsequent decline to much lower levels. The much higher levels of public takeovers compared to IPOs, and the resultant fall in the number of London listed companies, has been the subject of much commentary over the past few years.

Historically PTP activity has been focused on small to mid-cap companies, with larger scale public takeovers more likely to be driven by strategic acquirors with substantial funding capacity that were able to benefit from substantial synergies. However, in recent years there has been an increasing trend for financial investors to be more active in £1bn+ PTPs due to growth in the size of the private capital markets, the belief of some investors that UK equity markets represent better value than other stock markets such as those in the US and a perceived valuation gap between public and private companies. Indeed, a number of the largest public takeovers in the last five years have been PTPs, including: the £7.1bn PTP of Wm Morrison Supermarkets plc by Clayton, Dubilier & Rice, LLC announced in August 2021, which was

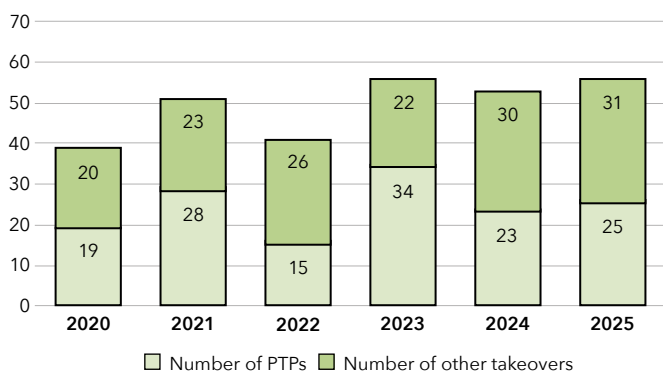
successful against a competing PTP offer from Fortress Investment Group, LLC; the £4.3bn PTP of Darktrace plc by Thoma Bravo LP announced in early 2024; and the £5.4bn PTP of Hargreaves Lansdown plc by CVC Group, Nordic Capital and Abu Dhabi Investment Authority announced in late 2024.

Hostile takeovers - offers which do not receive a recommendation from the board of the target - are now rare in the UK market, although a more common situation is for an initial hostile approach to lead to a recommendation being secured at a later point in discussions. Hostile takeovers are rare, but it is particularly rare for a PTP to be hostile given the challenges that this presents in terms of conducting due diligence that would be required by the providers of funding for the offer and the desire of many private equity houses to work constructively with management teams.

The level of PTP activity tends to be correlated with the level of wider M&A activity, although there are a number of specific factors that drive PTP activity levels, including:

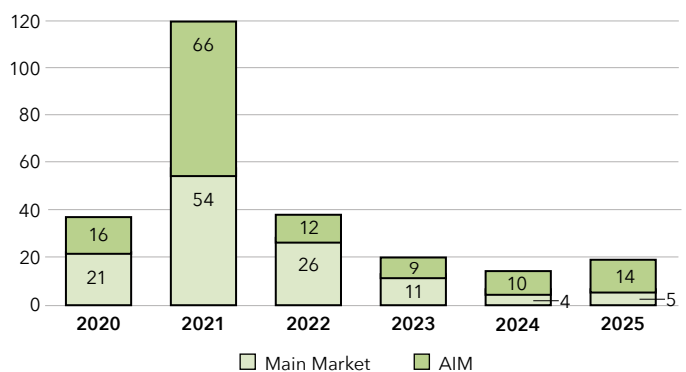
- the amount of private capital available to financial sponsors and average fund sizes and investment ticket sizes;
- the availability and terms of debt financing;
- valuations of listed companies, both absolute and relative to private company valuations;
- the regulatory environment for listed companies and the associated administration and costs;
- the availability and pricing of equity financing to listed companies to fund organic growth and acquisitions; and
- specific sector trends driving interest from financial sponsors in particular types of businesses.

Figure 1a: UK takeovers and PTPs



Source: PwC Research, Thomson Reuters Practical Law

Figure 1b: UK IPOs on Main Market and AIM



THE PUBLIC TO PRIVATE TRANSACTION PROCESS

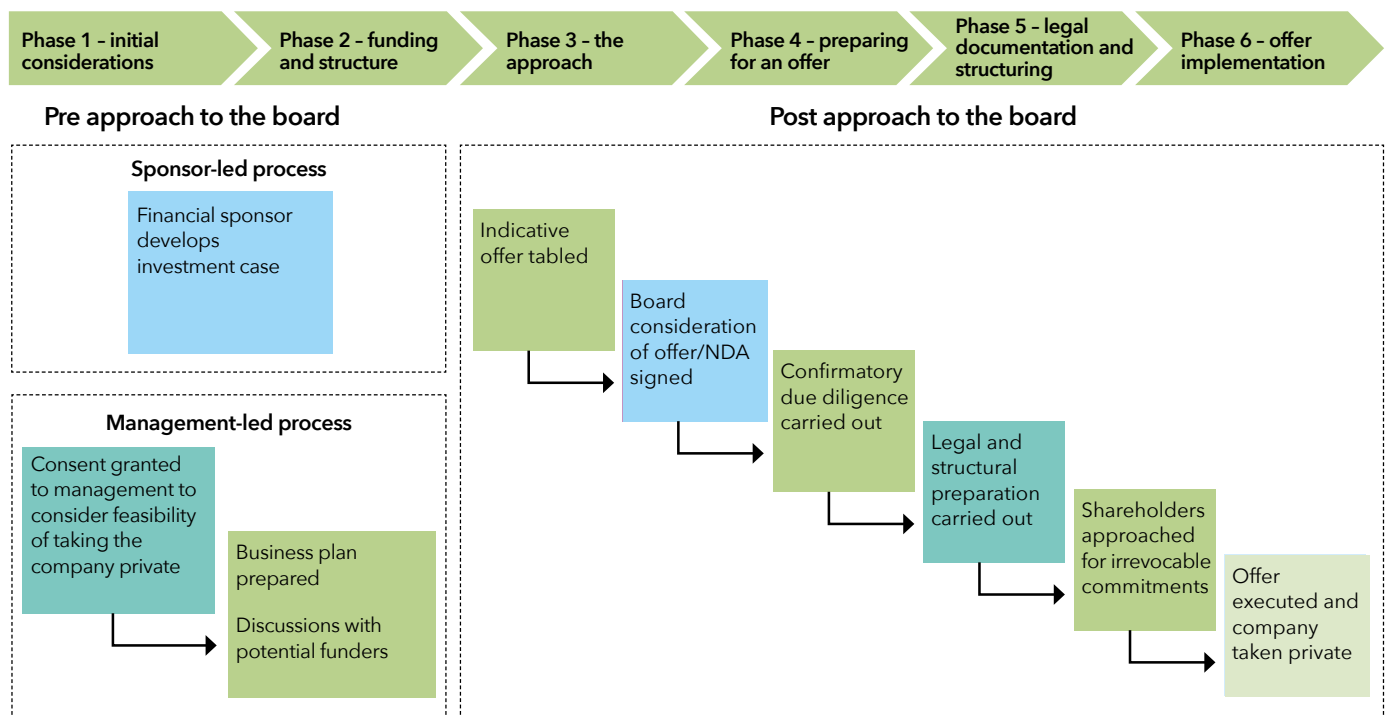
OVERVIEW

Set out below is an outline of the key steps in a PTP process. The initial steps will depend on whether the process is being led by the management team or by a financial sponsor.

If it is a management-led process then, once the management team have decided that they wish to explore a PTP in a more formal way (such as by

appointing their own advisers), they should first obtain consent from the independent directors of the target to pursue this course of action, including permission to release target information to potential funders under a confidentiality agreement, and to spend time in developing a business plan with a financial sponsor.

Figure 2: The PTP process



PHASE 1 – INITIAL CONSIDERATIONS

In assessing the feasibility of a PTP, the management team or a potential acquiror will typically start by looking at a number of factors that determine the potential risks and rewards of a transaction. This is particularly important in a PTP given the high execution risks driven by the inability (except in very limited circumstances) to secure any deal protections from the target for the potential bidder (such as exclusivity or break fees), the significant costs of a deal, and the risks of a competing bid or a rejection of a bid by shareholders.

Share price

The market will generally expect an offer to be priced at a premium of at least 30-50% to the prevailing share price prior to a bid being announced, although other pricing and valuation metrics will also be relevant. The offer price and recent trends in the share price compared with the entry price of key target shareholders will be important in assessing the attractiveness of an offer.

A bid made in the context of a share price that has recently declined significantly may be viewed as opportunistic by the target board and the target's shareholders. Conversely, a rising share price can erode the premium, making an offer seem less attractive by the time of announcement.

Share price targets issued by research analysts and the share price performance of comparable companies will also be key benchmarks.

Dividends

The bidder will want to consider the treatment of any dividends either declared by the target, or that would ordinarily be expected to be declared during the course of the offer, and whether these will be payable in addition to the offer price or will be deducted from the offer price. Further, the bidder might consider the date on which the target share price becomes ex-dividend as, if the dividend is particularly significant, it may impact on the premium represented by the offer price.

Valuation metrics

The target board and its shareholders will consider the terms of any offer in light of the fundamental valuation metrics compared to benchmarks for comparable listed companies and transactions. In this

context it will be important to understand whether the target looks under- or over-valued and the ability to offer an attractive premium to the current share price.

The bidder will want to formulate the valuation arguments that would be made to the target board and its shareholders. Key metrics are likely to include enterprise value (EV) to earnings before interest, tax, depreciation and amortisation (EBITDA) and share price to earnings per share (P/E) as well as sector specific metrics such as the premium or discount to net asset value (NAV) for real estate businesses or listed investment companies/trusts. The bidder may need to appropriately adjust metrics so that they are comparable with other listed companies and transactions, for example, to ensure that right-of-use assets under IFRS 16 are treated consistently in EV and EBITDA metrics.

Board and management

The target board's response to an approach will be an important determinant of the success or otherwise of an offer. The vast majority of successful offers¹ receive a recommendation from the target board to the target's shareholders to accept the offer, and also benefit from the active cooperation of the target board throughout the preparation of a bid, including the provision of access to due diligence information.

A management team that can continue in place after a bid, driving a growth plan, will represent a significant positive for almost all financial sponsors. In cases where a PTP is being driven by a management team, the team may have views on an alternative plan for the business under private ownership that would not be feasible as a public company.

Activist shareholders

Target shareholders will ultimately need to accept or approve any offer that is made, so the make-up of the target's share register must be reviewed to determine the likely attitude of its shareholders to an offer. Certain activist shareholders may seek to block a bid or may proactively seek out higher bids from competing bidders. Also, other parties such as competing businesses may seek to influence or block a bid or a potential future bid by building a stake. Notable examples of shareholders opposing

¹ In 2023 there was one successful bid which was hostile throughout, which was a PTP. In 2024 and 2025 there were no successful bids which were hostile throughout.

bids include the initial opposition of PrimeStone and the founders to the £1.3bn bid for Smart Metering Systems plc by Kohlberg Kravis Roberts & Co. LP in 2023, which was subsequently changed from a scheme of arrangement to a takeover offer with PrimeStone and the founders assenting their shares to the offer; and the successful opposition by Jenzabar Limited to the £160m bid for Tribal Group plc by Ellucian Company LP.

It is now common for the share register of a target to change after a bid or potential bid is announced, with merger arbitrage funds building stakes, seeking to benefit from any discount in the share price compared to the offer price and/or to benefit from a higher revised or competing offer.

'Bumpitriage', increasingly a feature of the public M&A landscape, is the practice of buying a stake in a target and then exerting pressure on a bidder to improve its offer. Such pressure is easier to exert on a takeover offer, where the activist may be able to prevent the bidder from obtaining the 90% acceptances of the offer required to 'squeeze-out' the remaining 10%. But even where the takeover is implemented by way of a scheme of arrangement, an activist may be able to rally other shareholders to threaten the success of the bid. However, these merger arbitrage funds are usually reluctant to, or cannot, procure that underlying target shares are voted in respect of an offer, increasing the voting proportion of other shareholders.

Shortly ahead of an offer announcement (it is normally more challenging for this to occur earlier on in the process), it is common practice for a bidder to approach key target shareholders to seek irrevocable undertakings to accept the offer (see Phase 4, Irrevocable undertakings on [page 17](#)). It is helpful to understand whether larger shareholders will typically provide such undertakings and the terms under which they may be provided. Similarly, a target board in receipt of an approach from a potentially hostile bidder may wish to consider having discussions with key shareholders ahead of rejecting the approach.

Stake building

A potential bidder may wish to consider purchasing shares in the target to gain a tactical advantage and to offset transaction costs in the event of a higher competing offer. This tactic should be considered at an early stage as there are a number of important

restrictions and implications associated with share buying in the context of an offer. Although many bidders consider purchasing shares, most decide not to do so as they do not want to risk becoming a long-term minority shareholder in a listed company which they do not control.

Rule 9 of the Code means that a party (together with its concert parties) is generally restricted to acquiring an interest in shares of less than 30% unless it is prepared to make an immediate all-cash offer for the target with no conditions other than an acceptance condition of more than 50% of voting rights in the target.

A potential bidder will need to be mindful of the restrictions under MAR if it is in possession of inside information. Under the Code, any share purchases can also have implications for the pricing and terms of any eventual offer.

Further details are set out in Other considerations, Share buying on [page 29](#).

Competing bidders

The population of possible competing bidders, and their likely ability and willingness to offer a premium valuation for the target will be key, given it is very difficult to effectively commit a target to a transaction before or after an offer announcement.

A bidder will want to be confident at an early stage that there are few alternative bidders or that it is well placed to be able to outbid any competitors that consider a counterbid.

Financial sponsors may be wary about looking at targets where there is a large pool of potential strategic buyers that could realise significant synergies.

An approach from a potential bidder may prompt the board of the target to consider other strategic options, which may result in discussions with an alternative bidder. It is also the case that a competing bidder may emerge after a deal is announced. For example, in January 2024, CEVA Logistics S.A. announced a £567m recommended offer for Wincanton plc. In early February 2024, Wincanton announced that it was in receipt of a possible offer from GXO Logistics, Inc and, subsequently, CEVA announced later the same day an increased and final recommended offer at £605m. In late February 2024, GXO announced a £762m recommended offer for Wincanton and the offer made by CEVA subsequently lapsed.

Other notable recent competitive situations include the offers for Spectris plc, Warehouse REIT plc, Inspired plc, Harmony Energy Income Trust plc and Assura plc.

Pension schemes

An added complication for a PTP is the existence of a defined benefit (DB) pension scheme.

Despite significant improvements in scheme funding levels, it remains important for the transaction parties to consider the impact of an offer on any DB scheme, particularly given legislation introduced in 2021 giving the Pensions Regulator strengthened criminal and civil sanctions against connected and associated parties including employers, sellers and acquirors.

DB pension trustees have the right, but not the obligation, to make a statement which must be appended to the offer or scheme document. Therefore, transaction parties will typically engage with pension scheme trustees and provide relevant information about how a potential offer impacts the employer sponsoring the scheme to enable an assessment of the impact on the employer covenant and ongoing access to value. Consultation and engagement with the Pensions Regulator are sometimes necessary.

The trustees will want to assess whether the proposed transaction may weaken the employer's financial and legal ability to support the scheme (the employer covenant), particularly in the case of a leveraged takeover, and may require additional contributions or security to mitigate any detriment. In assessing the scale of such mitigation, the specific circumstances of the target and the scheme will need to be carefully considered, particularly the scheme's funding level, which may differ significantly from any accounting deficits set out in the published financial results.

Transaction parties may also wish to consider options around future release of surplus in DB schemes, particularly given proposed legislation set out in the Pension Schemes Bill 2025 providing greater flexibility to employers and trustees wanting to agree surplus release.

Specialist advice should be taken early on in any process, and any likely contribution, security, or surplus related implications should be factored into the evaluation of the target.

Costs of a PTP

PTPs can be high-cost transactions, particularly if a leveraged buy-out (LBO) structure is used. It is also the case that the target's costs will necessarily be funded out of the target's cash resources, so will effectively be borne by the bidder.

Figure 3: Typical categories of costs for a PTP funded through a leveraged buy-out structure

COSTS FOR THE BIDDER

- Financing fees - debt
- Financing fees - equity
- Financial adviser(s)
- Broker(s) (if required)
- Legal adviser to bidder
- Legal adviser to the financial adviser(s)
- Public relations adviser
- Due diligence advisers
- Stamp duty (if target is Main Market listed)
- Panel fees
- Auditors/reporting accountants (if required)
- Tax advice
- Receiving agent
- Management team advisers

COSTS FOR THE TARGET

- Financial adviser(s) (including the Rule 3 adviser)
- Legal adviser
- Broker(s)
- Public relations adviser
- Reporting accountants (if required)
- Counsel (if a scheme)
- Break costs on debt facilities
- Printers and registrars
- Virtual Data Room (VDR) costs
- Due diligence preparation costs (such as Vendor Assist work)

Regulatory approvals and other authorisations

Any required regulatory consents will need to be factored into the analysis of the feasibility of a PTP and the timetable. For example, a change of control of a financial services business may require approval from the FCA or the Prudential Regulation Authority, and there may be overseas regulators that will need to approve the transaction. Clearance may also be required under legislation such as the National Security and Investment Act 2021 (NSIA).

At an early stage, the potential bidder (as well as the target board) will want to understand the prospects of successfully obtaining the necessary regulatory consents and the timetable for securing them.

The Code requires that an announcement of a firm intention to make an offer under Rule 2.7 of the Code should only be made if the bidder has every reason to believe that it can and will continue to be able to implement the offer. In this regard, a bidder will want to have a high degree of visibility on securing the necessary regulatory consents.

A potential bidder that makes an offer subject to regulatory approvals will need to be aware that the Panel will need to consent to invoking any condition to an offer. The Panel has a very high threshold - the circumstances which give rise to the right to invoke the condition must be of material significance to the bidder in the context of the offer (see Phase 5, Conditionality and MACs on [page 23](#)).

If an offer is structured as a takeover offer, a bidder may request suspension of the timetable if any official authorisation or regulatory clearance is outstanding by the second day prior to day 39 of the offer timetable and either: a) both parties agree or b) the bidder can show that the authorisation or clearance is of material significance.

This was the case during the offer by Siterwell Electronics Co Ltd offer for FireAngel Safety Technology Group plc which was announced in October 2023. The Panel granted a timetable suspension in December 2023 while the deal was examined under the NSIA. The offer timetable was resumed following the Secretary of State giving notice of a final order in May 2024 which approved the offer subject to the satisfaction of certain conditions and the offer ultimately completed in July 2024.

If a competitive situation continues to exist in the later stages of the target's offer period, the Panel will normally introduce an auction procedure to bring the offers to a conclusion. However, this will not happen until the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the bidders. Therefore, unless the parties all agree otherwise, a bidder with no regulatory condition will need to wait until the competing bidder has satisfied its own regulatory conditions before the Panel will intervene.



PHASE 2 – FUNDING AND STRUCTURE

Funding

At an early stage, the potential bidder will need to determine how any PTP will be funded. In addition to the offer value, there is likely to be a requirement to refinance any existing debt facilities in the target and to fund any break costs or early repayment fees associated with such debt facilities. The transaction costs and fees (both of the bidder and the target) will also need to be funded.

A management team that is considering a PTP will need to give careful thought to the identity of financial sponsors it talks to, given the restrictions under the Code (Rule 2) on the number of parties that can be approached without an announcement or the consent of the Panel (no more than six excluding immediate advisers). An experienced financial adviser can provide valuable insights on the funds that are most likely to have an interest in the opportunity and the house style of each of the funds and the fit with the management team.

Due diligence

There may be limited due diligence access, at least in the early stages of a PTP, given the need under the Code (Rule 21.3 of the Code) to provide equal access,

when requested, to such information to all bona fide bidders. The release of commercially sensitive information to trade competitors could be detrimental to the target’s business. Further, parties will be mindful of sharing competitively sensitive information which could lead to competition law issues.

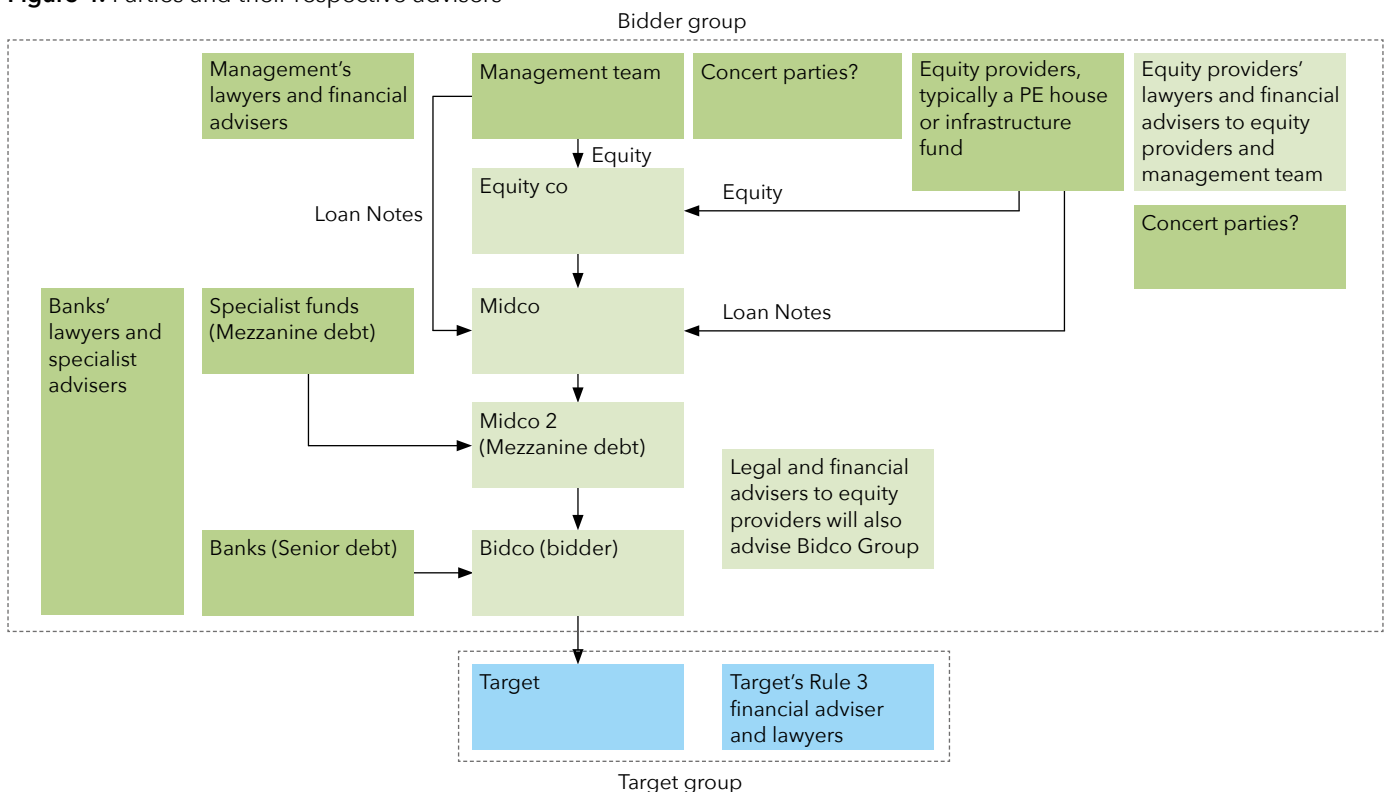
Parties and their advisers

The bidding vehicle will normally be the subsidiary of a stack of companies housing the equity, senior debt and any mezzanine finance. This separation is for tax structuring and debt subordination purposes.

The equity provider (usually a private equity house or infrastructure fund) and the bidding vehicle will have a single legal adviser, and the management team may also be separately advised in relation to their participation in the bidder group.

The target must obtain independent financial advice under Rule 3 of the Code. The requirement for competent independent advice is of particular importance in a PTP, where the independence of the adviser for the independent directors must be beyond question. Furthermore, the responsibility borne by the financial adviser is considerable and, for this reason, the target’s board should appoint an independent financial adviser as soon as possible after it becomes aware of the possibility that an offer may be made.

Figure 4: Parties and their respective advisers



Leveraged buy-out returns

A financial sponsor will want to take a view at an early stage on whether or not a PTP opportunity is likely to deliver an acceptable level of financial return.

A private equity investor's assessment of a PTP opportunity is similar to the assessment of a private company LBO. For example, an investor may be looking to target a return of at least two or three times its initial investment over a five-year hold period. A number of assumptions will need to be made to assess the likely returns from the investment, including the level of offer premium required, the existing debt in the target requiring refinancing, the level of acquisition debt that can be raised, the profitability and cash flow profile of the target in the future and the valuation on exit. The financial adviser to the potential bidder will usually take the lead in developing an LBO financial model which will enable returns to be assessed as key assumptions are flexed.

Concert parties

The Code extends certain rules which apply to a bidder, to other persons who are, or are deemed to be, acting together with the bidder to obtain or consolidate control of a company (or to frustrate the successful outcome of an offer). Such persons are known as concert parties. The Code contains several rebuttable presumptions as to who is acting in concert with a party involved in a public bid, including:

- companies with their affiliates and directors;
- individuals with their close relatives and related trusts; and
- fund managers with the portfolio companies that they manage.

Under the Code, the bidder and its concert parties will be treated for certain purposes (such as dealings in the target's shares) as a single person. Therefore, it is essential for the bidder to identify any concert parties at an early stage (in any event, prior to the announcement of a firm offer) by undertaking a concert party analysis, in consultation with the Panel where there is any uncertainty.

Once an announcement of an offer is made, a bidder who is a financial sponsor will typically send stop notices to its portfolio companies which will form part of their concert party, notifying their boards not to deal in target shares.

CONTROL

A key part of any concert party analysis is to determine which corporate entities are treated as one with the bidder. In particular: a) a company is acting in concert with a bidder if it controls, is controlled by or is under the same control as the bidder (presumption 1); and b) a company is acting in concert with a bidder if either that company or the bidder is interested, directly or indirectly, in 30% or more of the equity share capital in the other (presumption 2).

For these purposes:

- Control requires an interest in: a) 30% or more of the voting rights of that company; or b) more than 50% of the equity share capital of that company.
- Interests do not dilute through a chain of ownership for the purposes of presumption 1, but they do for presumption 2.
- Funds are treated like companies and so presumptions 1 and 2 apply equally to a limited partnership interest in a fund of 30% or more.
- Portfolio companies are typically only treated as acting in concert with the financial sponsor after the first announcement which identifies the bidder (unless they are made aware earlier), known as the 'Rule 7.2 moment'.





Joint offerors

In regard to a consortium bid, it will be important to establish that any target shareholder which is part of the consortium will be deemed by the Panel to be a genuine joint offeror so that the arrangements entered into between it and the other consortium members do not amount to a breach of the principle that all the target shareholders should be treated equally. If that party does not have sufficient control and involvement in the bid to be afforded joint offeror status, such arrangements may be in breach of the Code principle of equality, and of Rule 16 of the Code, which prohibits special arrangements with particular target shareholders.

The following questions are relevant to determine whether a consortium member is a joint offeror, as opposed to a person acting in concert with the bidder:

- What proportion of the equity share capital of the bid vehicle will the person own after completion of the acquisition?
- Will the person be able to exert a significant influence over the future management and direction of the bid vehicle?
- What contribution is the person making to the consortium (beyond its shareholding in the target)?
- Will the person be able to influence significantly the conduct of the bid?
- Are there arrangements in place to enable the person to exit from their investment in the bid vehicle within a short time or at a time when other equity investors cannot?

PHASE 3 – THE APPROACH

Tactics

The potential bidder will want to consider a number of factors relating to an approach to the target:

- **Individuals to be approached** – usually the chairperson of the board of directors of the target would be the formal contact for an offer approach, but there may be existing relationships with other members of the board, such as the chief executive, that could be used tactically to build support. This will also depend on the role that the management team are playing in driving the PTP.
- **Timing** – provided strict secrecy is maintained, a potential bidder has control over the timing of an approach and can time it to maximise its advantage. Factors to take into consideration could include recent share price performance, changes in shareholdings, recent and upcoming financial performance and related announcements, and board and management changes.
- **Nature of the approach** – most potential bidders will want to secure a recommendation of their offer from the target board, so will make an approach on a friendly basis. However, certain bidders may be comfortable with a more aggressive approach with an objective of securing a board recommendation in due course.
- **Shareholders** – a bidder may wish to approach key target shareholders ahead of an approach. This can provide insights into price expectations and supportive shareholders can be used to put pressure on a target board that is reluctant to engage in discussions. However, it can be seen as unfriendly behaviour by a target board and its shareholders may be reluctant to engage in discussions or to be made insiders.

Indicative offer and considerations for the target board

An indicative offer letter from the bidder indicating an offer price which is acceptable in principle to the target board will usually be required before it decides to grant the bidder access to due diligence materials. In addition, the target board will want to understand how deliverable the offer is. It is therefore important that such an offer letter clearly sets out the offer terms and value, the work conducted by the bidder to date,

the transaction structure, the remaining steps to announcement of an offer, the main conditions of the offer and the reasons why the board or independent directors should be willing to recommend the terms of the offer to target shareholders (see Figure 5 for possible contents).

The target board will then need to consider, in conjunction with its financial adviser, whether the proposed terms are recommendable to shareholders and whether they can be improved through negotiations. Typically, there may be several iterations of an indicative offer letter before the target board is willing to grant due diligence access. The target board and its financial advisers will take into account a number of factors which could include:

- **Valuation benchmarks** - the valuation of the business implied by comparable transactions, comparable listed companies and discounted cash flows.
- **Share price premium** - the premium represented by the indicative offer and the likelihood of the target's share price attaining this level in the short- to medium-term.
- **Identity of the bidder** - credibility of the bidder, which may include reference to size, experience, access to funding and strategic fit.
- **Pre-conditions and conditions** - any pre-conditions to making an offer that could materially impact deal execution risk and the nature of any specified conditions to an offer.
- **Value to the bidder** - the returns resulting from an LBO model and the impact of any synergies that could arise from a combination with a similar business in a financial sponsor's portfolio.
- **Alternative bidders** - the value of the business to other bidders, which may be able to pay a higher price due to synergies or strategic fit.
- **Alternative strategic options** - other ways of achieving value for shareholders, eg, a return of capital, refinancing, sale of parts of the business, acquisitions or a change in strategy.
- **Treatment of dividends** - whether the declaration of a dividend will reduce the offer price, which is particularly important if the bidder's offer is subject to regulatory conditions which may take several months to satisfy.

If the target board decides that the terms of the indicative offer are acceptable then it may grant the bidder access to conduct a confirmatory due diligence process. If the board decides that the terms are not acceptable then it should consider how it will respond should the potential bidder adopt a more aggressive or hostile approach.

Stub equity

The most common form of consideration offered on a PTP is cash. However, a bidder can also offer consideration in the form of listed and unlisted securities, such as unlisted shares in the relevant bid vehicle (stub equity) or loan notes.

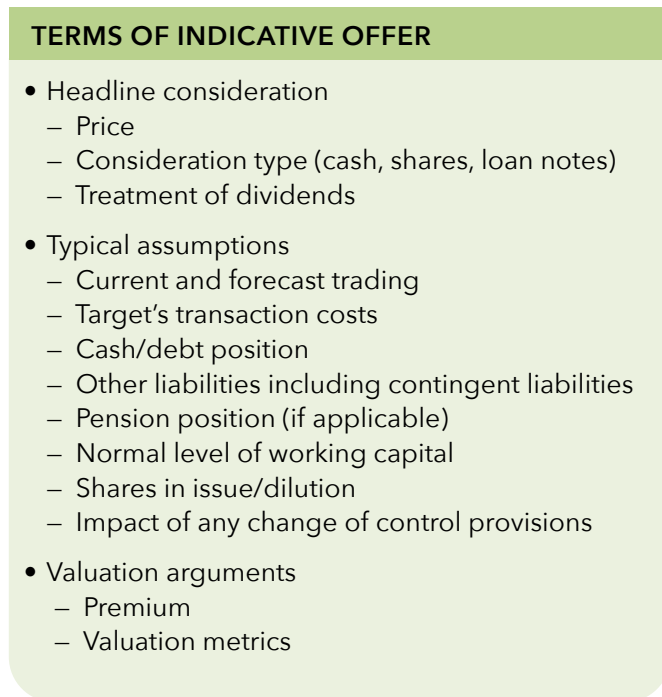
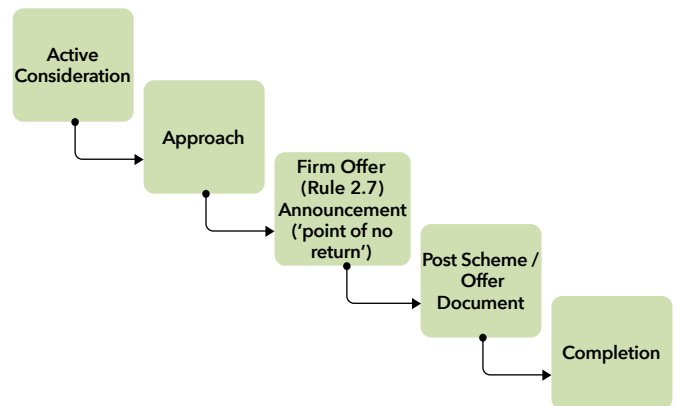
Offers of stub equity, particularly as a full or partial alternative to cash, have become increasingly popular on PTPs, with recent examples including Inflexion's offer for DWF Group plc, TA Associates' offer for FD Technologies plc and the takeover of Hargreaves Lansdown plc by a consortium made up of CVC, Nordic Capital and the Abu Dhabi Investment Authority.

Stub equity can be an effective tool to bridge a valuation gap between target shareholders and the bidder, offering target shareholders an opportunity to retain exposure to future up-side. Further, it can enable the bidder to implement an equity rollover by target management as part of its overall approach to incentivisation.

When a bidder wishes to include stub equity in its offer, it should be mindful of Practice Statement 36 and consult with the Panel early in the process. In particular, the Panel is keen to ensure that all target shareholders are:

- treated equally (eg, a share alternative cannot be offered to the largest shareholder only); and
- given sufficient time and information to enable them to reach a properly informed decision on the offer. Consequently, detailed disclosures of the rights and restrictions relating to the stub equity being offered to target shareholders will be summarised in the offer or scheme document and a copy of the long form equity documents must be made available on the offer website of the bidder and the target.

Further, the offer or scheme document must contain an estimate of the value of any stub equity by an appropriate adviser (often the bidder's financial adviser) under Rule 24.11 of the Code.

Figure 5: Terms and other contents of the indicative offer**Key stages of a PTP****Figure 6:** Key stages of a PTP

Active consideration is the first stage at which the Code will become relevant. As it is normal for corporate executives, financial sponsors and business development personnel to consider M&A opportunities and run desktop analyses on potential acquisition targets, this alone is unlikely to be active consideration; nor should general scoping conversations with bankers and lawyers constitute active consideration. However, the engagement of a deal team for a specific deal (even before any engagement letters are signed) and/or speaking to other external parties (see The rule of six, later in this section) is likely to be enough.

An approach to the target is considered to have been made when a director or representative of, or an adviser to, the target is informed by, or on behalf of, a potential bidder that it is considering the possibility of making an offer for the target. This may be at a very preliminary stage in the potential bidder’s preparations, and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach to be made in writing (it could be a dinner conversation with a single director), or for an indicative offer price (or any terms or conditions) to be specified, and even the briefest communication can be deemed by the Panel to constitute an approach. A bidder should always take advice before any form of approach is made to target personnel or their advisers.

Secrecy

Secrecy before an announcement is of vital importance and the risk of leaks must be minimised. All persons who are privy to confidential information concerning an offer or possible offer must conduct themselves so as to minimise the chances of any leak of that information (Rule 2.1(a) of the Code). In the event that there is a leak of information then the Panel may require an immediate announcement to be made (which would commence the 28-day 'Put Up or Shut Up' (PUSU) period referred to below) and will wish to learn of the procedures and controls that were put in place to maintain the confidentiality of information.

See Schedule 1 on [page 32](#) for a diagram on the stages of an offer which take place in private versus those that occur after a public announcement.

Leak announcements and the PUSU period

Unless an immediate announcement is to be made, the Code requires that the Panel is consulted in circumstances where there is a material (10% or more above the lowest share price since the commencement of active consideration, unless the Panel has previously been informed about the possible offer by the bidder or its financial adviser) or an abrupt share price movement (5% or more in a single day) or where there is rumour and speculation in relation to the target. Following the commencement of active consideration but before an approach, this requirement is the obligation of the potential bidder and appropriate procedures should be put in place to monitor real-time share price movements and any rumour or speculation. Following the approach to the target, the obligation passes to the target (although if the target board unequivocally rejects the approach, the obligation switches back to the potential bidder).

If an announcement is required, it triggers a 28-day PUSU timetable after which the bidder must announce a firm intention to make an offer or withdraw from making an offer for at least six months. The 28-day PUSU period can be extended with the consent of the Panel. In practice, the Panel is likely to consent if the target is agreeable to such an extension and there is a reason for such an extension. Such an announcement by the target must also identify any other potential bidders.

The rule of six

The Panel should be consulted prior to more than a total of six external parties (beyond immediate advisers and bidder personnel) being approached about an offer or possible offer including: potential providers of finance (whether equity or debt); investors in the sponsor; shareholders in the target; the target's pension fund trustees; potential management team candidates; significant customers of, or suppliers to, the target; potential purchasers of assets; and rating agencies.

Where an equity or debt provider is no longer interested in the proposed offer, the Panel may allow this party to be no longer counted as one of the six as long as they are not a shareholder in the target. If information about an offer is disclosed to more than a very limited number of people outside the companies concerned and their immediate advisers, the Panel may require a public announcement.

If the target intends to approach potential bidders in respect of a possible offer, the Panel should be consulted before more than one potential bidder is approached.

Good transaction hygiene

Cyber security is an increasingly critical consideration in UK PTPs as the integrity, confidentiality and availability of digital information is essential to protect sensitive data exchanged during the due diligence process (either via Virtual Data Room, over email or via video conferencing software), as well as in the preliminary stages of a possible offer where sensitive information is often transmitted (albeit, encrypted) over email. Practitioners and parties to a bid should use code names, password protect emails and lock calendar invitations throughout the process.

As AI technology continues to improve at a rapid pace and is becoming an important tool for businesses, investors and advisers, great care should be taken before inputting PTP transaction information into an AI system. It would not be appropriate to use public large language models given the risks that confidential or sensitive information could be stored or used for model training or handled inappropriately.

Specific considerations for a management team looking to lead an offer

A management team that is contemplating an offer should bear in mind the following:

- their duty to continue to act in the best interests of the target and continue to do their day job;
- the importance of complying with the rule of six (see above) in any exploratory talks;
- not sharing confidential information with finance providers or any other party unless and until the independent directors of the target board consent; and
- that the bid is likely to constitute inside information and unauthorised disclosure or dealing in the target shares on the basis of such information may be an offence under the market abuse regime and insider dealing legislation.

Split of the board/keeping the board together

Provided the independent directors have agreed to the buy-out proposal being put together, there is no problem in principle with members of the management team continuing as directors of the target while the offer is in contemplation or being implemented.

The transaction will be run on behalf of the target by a committee comprising the independent (ie, non-management team) directors. Once the target board splits into the management team and the independent committee, the responsibilities of the two groups during the process will differ, as shown in Figure 7.

The management team directors should note that in carrying on the target's business, decisions must be taken having regard to the interests of the target and not those of the management team, the financial sponsor or the proposed bidder.

The appointment of a committee of independent directors of the target does not relieve the members of the management team who are directors of the target from their directors' duties or their duties under the Code. In particular, they retain their duties to accept responsibility for documents issued to the target shareholders (excluding any recommendation given by the independent directors of the target to accept the offer from the bidder, as they will be conflicted from giving such recommendation) and not to take any frustrating action (which could be relevant in the event of an offer being proposed in competition with the management team).

Figure 7: Respective responsibilities of the management team and the independent directors

MANAGEMENT INVOLVED IN THE BUYOUT	INDEPENDENT DIRECTORS
<ul style="list-style-type: none"> • Continue to be responsible for the management of the business • Develop business plan • Maintain secrecy • No share dealings • May be parties to the subscription and shareholders' agreement (giving warranties) • New employment contracts • Responsible for certain information in the offer document • Abide by the Code 	<ul style="list-style-type: none"> • Give management approval to consider feasibility of taking the target private • Control flow of target information to the financial sponsors (together with legal and financial advisers) • Have an obligation to deal with competing bona fide third-party bidders • Maintain secrecy • No share dealings • Determine, together with the appointed financial adviser, whether the offer is 'fair and reasonable' and state the terms of management's participation in the bidder are 'fair' • Responsible for certain information in the offer document • Abide by the Code

PHASE 4 – PREPARING FOR AN OFFER

Confirmatory due diligence

Once a bidder has made an approach to a target and the offer price is recommendable or close to recommendable, the bidder will want to carry out confirmatory due diligence on the target's business. The bidder will be required to enter into a non-disclosure agreement before it is provided with the necessary information on the target. This agreement will typically include a standstill undertaking, under which the bidder will agree that it and its affiliates will not trade in the target's shares (without the target's consent) or make a hostile offer for the target (typically for six months) unless, for example, a third-party bidder makes its own firm offer for the target. This standstill undertaking restricts the bidder from using confidential information to launch a hostile bid.

A financial sponsor will want to undertake a due diligence exercise to enable it to:

- evaluate and understand any risk associated with owning the target;
- obtain an operational understanding of the target's business; and
- confirm the price that it is willing to pay for the target's shares.

Any due diligence exercise is likely to involve financial, tax, legal, commercial, actuarial (if the target has a defined benefit pension scheme), insurance, and possibly environmental and regulatory due diligence. The scope of the due diligence exercise will vary according to circumstances and will generally be more limited than on a private acquisition but will ultimately depend on a number of factors. These include the identity of the bidder, the target's sector and the price offered, and whether the target's directors, in considering their fiduciary duties, believe that sharing such information might result in a recommendable offer.

Companies will normally want to delay the disclosure of certain highly sensitive information to a financial sponsor until late in the process. The reason for this is Rule 21.3 of the Code which requires that all information, management meetings and site visits the target provides or makes available to one bidder must also be provided or made available equally and promptly to any other bona fide bidder that requests the same.

Whereas a target may not mind a financial sponsor seeing certain information, it may not want to disclose that information to, say, a competitor with the same or a similar business, particularly if there is not yet a high degree of certainty of an offer being made for the target. Disclosure of such sensitive information is therefore often left until much later in the due diligence process.

Certain information may not be able to be provided directly to a bidder, in situations where the sharing of commercial information between business competitors may have competition law consequences. Where such information is necessary for the bidder and its advisers to assess whether competition or other regulatory clearances are necessary, the information may be passed on to a 'clean team' of external advisers and non-business individuals representing the bidder. External counsel-to-counsel only clean team arrangements must be approved by the Panel if it is to agree to the target imposing the same arrangements on a competing bidder in respect of information that is required to assess the need for and to seek regulatory authorisations. Clean team arrangements are only acceptable to the Panel in these situations and will otherwise require disclosure of commercially sensitive information shared with one bidder to all other bona fide bidders when requested under Rule 21.3 of the Code. This is most likely to be relevant where: a) the financial sponsor already manages portfolio interests which overlap with the target's business; and/or b) the target believes a competitor is also likely to show an interest in acquiring the target and might reasonably request equivalent access to information which has been disclosed to the financial sponsor.

Specific information sharing provisions for management buy-outs

The extent of any due diligence exercise to be carried out on the target group will need to be approved by the independent directors of the target. The management team alone does not have authority to approve the scope and indeed must not hand over any confidential information relating to the target, except with the approval of the independent directors. In particular, Rule 21.3 of the Code requires the management team to cooperate with the independent directors and its advisers in the assembly of due diligence information.

Rule 21.4 of the Code states that, in the case of a management buy-out (MBO), the bidder or a potential bidder must, if requested, give to the target's independent directors and financial advisers all information which has been given by the bidder or a potential bidder to external providers or potential providers of finance (whether equity or debt) for the buy-out.

The Panel has stated that this includes information on the target generated by or with the assistance of the target's management, eg, the bidder's business plan or the due diligence reports prepared by the management team's professional advisers. In cases of doubt, the Panel should be consulted. This information is not, however, required to be provided to any other bona fide bidder.

Irrevocable undertakings

Given the execution risk inherent in a public bid, ensuring that significant target shareholders are supportive is a key consideration. Therefore, irrevocable undertakings are usually sought from significant shareholders in the target and the directors of the target just prior to the announcement of a firm intention to make the offer. The persons giving the undertaking agree to accept the takeover offer or, in the case of a scheme, to vote in favour of the scheme. As target shareholders have withdrawal rights under the Code, irrevocable undertakings also contain a commitment that the relevant shareholder will not exercise those rights to withdraw its acceptance.

Irrevocable undertakings are typically either 'hard' irrevocables (where they do not fall away unless the PTP lapses) or 'soft' irrevocables (where the undertaking to accept the offer or vote in favour of the scheme ceases to apply if a competing higher offer is made or announced).

Semi-hard irrevocables will only fall away if a competing bidder makes an offer at a price that is more than x% above the PTP offer price (where x is typically 5% or 10%). Some institutional investors have a policy of only giving soft irrevocables. Investors who are reluctant to give an irrevocable undertaking may instead give a non-binding letter of intent. The terms of all irrevocable undertakings and letters of intent obtained in connection with a bid must be summarised in the bid documentation and a copy of

them must be made available on the offer website of the bidder and the target.

Where shareholder directors are asked to give irrevocable undertakings in respect of their shares in the target, these undertakings cannot be used to circumvent the rules against deal protection by way of offer-related arrangements. The Panel has published Practice Statement 29 setting out terms which must not be included in directors' irrevocables, including obligations not to seek competing bids. Shareholder directors can, however, undertake to elect for a particular form of consideration when alternative forms are offered by the bidder, and to agree not to sell their target shares other than pursuant to the bidder's offer.

The process by which the bidder approaches target shareholders seeking irrevocable undertakings is regulated by the Code and MAR.

Under Rule 20.2 of the Code, any meeting with target shareholders (other than those who are the target directors) will typically need to be attended by the bidder's financial adviser, who must confirm to the Panel that no material new information or significant new opinion was shared with the shareholder or, if the meeting takes place before the bid is announced, that any material new information or significant new opinion provided to the shareholder will be published when the offer is announced.

The Panel may grant a dispensation from the chaperoning requirement following the announcement of a recommended firm offer with no competing bid, subject to the financial adviser giving an appropriate briefing to the representatives of the bidder or target who will attend the meeting, and those representatives making the same representations to the Panel as the financial adviser would have made.

An approach to target shareholders in respect of the bid will constitute a 'market sounding' under MAR which sets out a prescribed process to benefit from a safe harbour preventing communications with target shareholders constituting an unlawful disclosure of inside information. Target shareholders are typically 'wall-crossed' 24-72 hours before the release of a firm offer announcement to minimise the amount of time they are in possession of inside information (which would prevent them from dealing in the target's shares while it remains inside information)

while leaving sufficient time to agree the form of an irrevocable undertaking or letter of intent, if applicable.

Post-offer intention statements

Under the Code, a bidder is required to state its intentions for the target business for the 12 months following completion of the offer on various matters, including the impact of its offer on employees, pension schemes and places of business. For example, the bidder might state whether it intends to: a) reduce the headcount of the target's or the combined group's employee base; b) move the head office of the target; and/or c) provide additional capital to the target for it to make bolt-on acquisitions.

These intentions are required to be disclosed at the time of the firm offer announcement under Rule 2.7 of the Code, to give stakeholders (and the government) an opportunity to comment on these intentions. The Panel will review these intention statements before the firm offer announcement is made.

These statements of intention are not binding but, under Rule 19.6 of the Code, must comprise an accurate statement of the bidder's intentions at the time and be made on reasonable grounds. In May 2024, the Panel released Bulletin 7, which acted as a reminder to Code companies and practitioners that the bidder's intentions should be specific and bespoke, appropriately reflecting the bidder's unique business rationale and intentions. For example, the following arguments are not considered to be an acceptable basis for a bidder formulating its statements of intention:

- The bidder's only intention for the 12 months is to conduct a strategic review, and the bidder will only formulate its intentions after that review has concluded. The Panel's view is that in these circumstances, the bidder should disclose what the review is likely to cover and its expectations in relation to the review.
- The statements satisfy the Code because they are in a standard form or are similar to statements made on another takeover.

If, following completion, the bidder does not take any of the actions it stated it intended to take, or takes a different course of action, it is required to explain these differences and the reasons for them to

the Panel, which may require the bidder to make an announcement of this fact promptly. In addition, at the end of the 12-month period following completion of its offer, the bidder will be required to confirm to the Panel and make an announcement stating whether it has taken, or not taken, the course of action specified in its intention statements.

Post-offer undertakings

Under Rule 19.5 of the Code and subject to prior consultation with the Panel, a bidder may choose to make a post-offer undertaking (POU). Rule 19.5 of the Code sets out the content and other requirements for a POU, including that:

- the POU must clearly state that it is a POU;
- a time period for the POU be specified (normally no more than five years);
- the POU be specific and precise;
- the POU be readily understandable and capable of objective assessment (and not depend on the subjective judgement of the bidder or its directors); and
- any conditions or qualifications to the POU be prominently stated.

Following completion of the takeover offer, the Panel takes on the role of policing the POUs. It can (and typically will) require a bidder to appoint (at its cost) a supervisor to oversee the bidder's compliance with its POUs and progress reports must be published at such intervals (of not more than 12 months) and in such form as the Panel requires. If a bidder does not comply with its POUs, the Panel has the power to require enforcement, including through the courts (if necessary). This being the case, POUs often require extensive discussion with the Panel before being put in place. A number of POUs were seen in 2018 and 2019, including undertakings given by Softbank on its bid for ARM, Comcast in relation to Sky, Melrose in relation to GKN, Connect Bidco consortium in relation to Inmarsat and Advent in relation to Cobham, but they remain rare on UK bids and have typically been used to address specific concerns raised by shareholders, wider stakeholders, the general public, the media and/or politicians.

PHASE 5 – LEGAL DOCUMENTATION AND STRUCTURING

At an early stage in the process the bidder will need to decide whether the bid should be structured as a takeover offer or a scheme of arrangement. The principal factors in that decision are set out in Figure 8.

On a takeover offer, the bidder offers to purchase the target shares from each target shareholder individually. A scheme of arrangement, on the other hand, is a statutory process by which the target applies to the court to sanction an arrangement by which the target shares are transferred to the bidder. Such a scheme must first be approved at a meeting of the target shareholders by a majority in number, holding at least 75% in value of those shares voted at that meeting.

Once the scheme of arrangement is approved by the target shareholders and sanctioned by the court, all the target shares subject to the scheme will transfer to the bidder.

For several years the preferred structure for a recommended offer has been a scheme of arrangement, largely due to the increased certainty and speed in acquiring 100% control of the target where target shareholders are in favour of the offer. This certainty and speed are helpful when the financial sponsor requires debt financing - there are additional factors to consider if the debt-financed offer is structured as a takeover offer.

In 2025, 48 of 56 takeovers were implemented by way of a scheme.

More on schemes

A scheme of arrangement differs from a takeover offer in that it is a statutory procedure controlled by the target and involving the court. It is not, therefore, appropriate for hostile bids as it involves an element of co-operation between the bidder and the target.

The process begins with an application to the court to convene a meeting of shareholders, or the relevant class of shareholders (see below), which will approve the scheme. Following such application, the scheme document will be sent to shareholders. The scheme document contains substantially the same information as an offer document and gives notice

of the court-convened shareholder meeting (the court meeting). It may also give notice of a general meeting which will be held immediately after the court meeting if shareholder approval is required for other matters, for example to make changes to the target's constitution to provide for compulsory transfer of shares issued following the scheme record time.

When convening the court meeting, it is essential that approval is sought from the correct class, or classes, of shareholders. If the shareholders' rights differ to the extent that it would be 'impossible for them to consult together with a view to their common interest' then they will constitute different classes, and approval will be required of each class separately.

The scheme must be approved at the court meeting by target shareholders (or shareholders of each relevant class):

- holding at least 75% in value of shares voted; and
- being a simple majority in number of those voting.

Following the court meeting there will be a sanction hearing at which the court will be asked to sanction the scheme. It will do so if: a) the statutory provisions, including as to notice and approval by the requisite majority, have been complied with; b) the class was fairly represented by those attending the meeting and the statutory majority acted bona fide; and c) the approval of the scheme is reasonable.

While this is uncommon, it is open to dissenting shareholders or creditors appearing at the sanction hearing to oppose sanctioning the scheme. Like the Panel, the court is not concerned with the commercial merits of the offer, which is for the target's board and its shareholders to consider.

If the court sanctions the scheme, it will issue an order to that effect and the scheme will become effective and binding on all target shareholders (whether or not they approved the scheme) when the order is delivered to Companies House.

Figure 8: Comparison of a scheme of arrangement and a takeover offer

KEY ISSUE	SCHEME OF ARRANGEMENT	TAKEOVER OFFER
Control of process	The scheme process is controlled by the target	The bidder controls the offer process
Suitable for hostile offer	Due to the co-operation required from the target, a scheme is unlikely to be possible	Yes
Stakebuilding	Shares acquired by the bidder (either pre- or post-announcement) are not able to vote at the shareholder meeting to approve the scheme	Shares held/purchased in advance of receipt of the offer document by target shareholders will not count towards squeeze-out Possible to structure so that any shares acquired after sending the offer document to the target shareholders do count
Timing	Although a takeover offer can be declared unconditional at an earlier stage, schemes allow the bidder to get to 100% more quickly	Ability to declare unconditional earlier (with 50%+1) but overall process to get to 100% slower (due to the squeeze-out threshold and process – see Phase 6, Offer implementation on page 25)
Threshold for avoiding a minority	Approval by shareholders: a) holding at least 75% in value of shares voted; and b) being a simple majority in number of those voting	90% threshold of shares to which the offer relates, to squeeze out minorities
Court sanction required	Yes – potential for objections due to requirement for court sanction	No

Management deal

A crucial part of the structuring of any PTP is agreeing the form of the management deal with the financial sponsor, in particular the MBO team's shareholding in the bidding vehicle and the terms on which the members of the management team may roll over their investment in the target into the bidding vehicle and any 'sweet equity' management incentive plan.

Rule 16.2 of the Code makes provisions for management incentivisation subject to certain requirements if they are discussed prior to completion of an offer. Where a bidder has entered into discussions as regards incentivisation arrangements:

- details must be disclosed in the public documents;
- the Rule 3 adviser must give a fair and reasonable opinion;
- where the value of the arrangements is significant and the nature of them is unusual, the Panel must consent and may require an independent target shareholder vote; and
- where, as a result of the arrangements, members of management will become shareholders in the bidding group on a basis not available to other target shareholders, the arrangements must be approved by independent target shareholders.

The bidder may decide to postpone discussion of management incentives until after completion of the offer and avoid the above requirements. Indeed, this has become the more common approach. If it wishes to do so, then the only discussions the bidder may have with management relate to the availability of incentive arrangements. No numbers or other detailed terms should be discussed, otherwise they could become subject to the above requirements. The bidder is required to confirm the nature of any discussions in the public documents, including a negative confirmation where incentivisation discussions are being postponed until after completion.

Key documents

Whether the PTP is implemented by takeover offer or scheme, the following are the principal documents used:

KEY FUNDING AGREEMENTS

- **Subscription agreement (if relevant)**

This is the document under which the financial sponsor and, if relevant, the management team agree to subscribe in cash for new shares in the bidding vehicle (or a parent undertaking of the bidding vehicle). The proceeds are used to part-finance the cash consideration to be offered to target shareholders. The subscription obligation is conditional only upon all conditions to the PTP being satisfied or waived.

- **Share exchange agreement (if relevant)**

This is the document under which the MBO team agrees to sell its shares in the target to the bidder where the consideration that they will receive is different from that to be offered to the other target shareholders (ie, normally shares in the bidding vehicle or one of its parent companies).

- **Investment (or shareholders') agreement (if relevant)**

This is the agreement that regulates the ongoing arrangements relating to the financial sponsor's and MBO team's investment in the bidding vehicle (or one of its parent companies).

- **Banking documents**

These documents commit the lending bank(s) to provide the acquisition finance, any refinancing facility for existing target debt and a working capital facility for the target group. Under Rule 24.8 of the Code,

there must be certainty that the financing for the cash consideration for the PTP will be available by the time the bidder makes a firm offer announcement under Rule 2.7 of the Code.

This must be confirmed by the bidder's financial advisers in the firm offer announcement and in the offer or scheme document itself. Therefore, between the time of such an announcement and completion of the PTP (often referred to as the 'certain funds period'), there must be very limited conditions outstanding or termination rights relating to the availability of the acquisition finance facility.

- **Equity commitment letters**

These are letters in support of the cash confirmation statement described above, in which the parties providing equity finance to the bidder group irrevocably undertake (subject to conditions) to provide the agreed subscription amounts by an agreed date. If there is a subscription agreement, then equity commitment letters will not be needed.

KEY OFFER/SCHEME DOCUMENTS

- **Irrevocable undertakings**

See Phase 4, Irrevocable undertakings on [page 17](#).

- **Announcement of firm intention to make the offer (Rule 2.7 announcement)**

This is the formal public announcement that announces the terms and conditions of the PTP and is seen as the equivalent to a conditional share purchase agreement on a private M&A transaction. Once this announcement is made, the bidder is compelled to proceed with the PTP, subject only to satisfaction of the relevant conditions that are specified in the announcement (known as the 'point of no return'). These conditions will include an acceptance condition which, in the case of a takeover offer, is normally a condition that not less than 90% of the shares to which the offer relates are assented to the offer, although the bidder will usually reserve the right to reduce this percentage to 50%+1 at its absolute discretion. As explained above, the acceptance condition for a scheme is 75% or more by value and a majority in number of the target shareholders who vote on the scheme, voting in favour of the scheme. See also later in this section, Conditionality and MACs on [page 23](#).

• Offer or scheme document

This document contains the actual offer for the target's shares. As well as containing all the required terms and conditions of the PTP, it must also contain details of the bidding vehicle and its debt and equity backers, and also certain information relating to the target. If the PTP is recommended by the independent directors (which in practice is likely to be the case given there are very few hostile PTPs), this document will also include the formal recommendation of the PTP from the independent directors which must be supported by the opinion of the target's financial (or Rule 3) adviser.

• Responsibility statements

The directors of the bidder must, together with certain executives from the financial sponsor (typically the investment committee), accept personal responsibility for the information relating to the bidder (Rule 19.2 of the Code) which is confirmed in this document. The directors of the target (including any members of the MBO team) will be required to accept personal responsibility for the information relating to the target, which is confirmed in this document. The independent directors of the target will also take personal responsibility for their recommendation of the PTP.

• Cooperation or bid conduct agreement

Although Rule 21.2 of the Code prohibits most offer-related agreements, the bidder and the target may enter into a cooperation or bid conduct agreement, containing arrangements setting out their obligations to cooperate to obtain regulatory clearances and other permitted covenants, including the bidder's obligation to cooperate with the implementation of the scheme or offer, provisions with regard to invoking conditions, switching from a scheme to an offer (or vice versa) and target share scheme proposals. Although inducement fees from the target are prohibited, with limited exceptions, under Rule 21.2 of the Code, the cooperation agreement can (albeit rarely) make provision for a reverse break fee from the bidder.

It has also become a feature of cooperation agreements to include target employee protection provisions which typically build on statements of intention which the bidder makes in the firm offer announcement and offer or scheme document. These provisions might state that any employee

made redundant during or shortly following the transaction will receive enhanced redundancy (if the target has such a policy) and that the target is entitled to pay retention bonuses to key employees. Retention bonuses are more common where the offer is subject to specific regulatory conditions and completion is expected to be several months after the firm offer announcement. While the Panel may regard those arrangements as a restricted action, it is likely to consent to them if the bidder approves and the awards are payable to a broad group of employees (rather than just management).

Cash confirmation

Where the consideration for the proposed offer is in cash or includes an element of cash (which is usually the case for a PTP), Rule 24.8 of the Code provides that the bidder's financial advisers (or another appropriate third party) must confirm in the offer/scheme document that the bidder has sufficient resources to satisfy full acceptance of the offer. This statement must also be made in the firm offer announcement.

The bidder's financial advisers will need to ensure that any portion of the purchase price to be funded by equity finance is backed up by enforceable subscription obligations or equity commitments. The equity subscribers will be required to undertake irrevocably to provide a minimum subscription amount. Such commitments must be subject only to the conditions of the offer or scheme being fulfilled. They will also need to be comfortable that any acquisition finance to be provided by the lending bank to fund the offer will be available on the offer becoming unconditional. They will therefore need to examine closely, with their own lawyers, the rights in which the lending bank may have to withdraw the acquisition facilities and the conditions precedent which must first be satisfied before the lending bank is required to pay out money under the facilities.

It is common to provide in the banking documents that, if certain events occur prior to drawdown, the bank will be entitled to withdraw its finance. To enable the bidder's financial advisers to give the requisite confirmation in the offer or scheme document as required by Rule 24.8 of the Code, these events are restricted to a limited number (primarily relating to the solvency of the bidder and

matters which fall within the control of the bidder) during the certain funds period.

The certain funds period is normally defined as the period between the release of the announcement of a firm intention to make an offer and completion, subject to certain alternative triggers (such as lapse of the offer) and a long stop date. In June 2021, a Joint Working Party of the City of London Law Society and Law Society of England and Wales published its view that it would be customary to ensure such funds are available for six weeks (in the case of a scheme) or eight weeks (in the case of a takeover offer) after the long stop date, in case this is extended. This view is commonly followed by practitioners.

The bidder is obliged under the Code to pay cash consideration to target shareholders within 14 calendar days of completion. Therefore, the financial sponsor, management team and bidder's financial adviser should ensure that, under the terms of the financing documents, the bidder can draw down and access the relevant equity and debt financing in sufficient time to satisfy this payment obligation, taking into account the receiving agent's deadlines to be placed in funds to arrange payment to target shareholders.

Disclosure of financing arrangements

All offer documents must contain a description of how the offer is to be financed and the source of the finance. With regard to debt facilities and other instruments entered into to finance the offer or refinance existing debt or facilities, the offer document must set out the principal terms of each facility. Unredacted copies of all the loan documents must also be made available on the target's and the bidder's websites following a firm offer announcement (although the Panel will typically not require market flex arrangements to be on display until the offer or scheme document is published).

Equity commitment letters will also need to be described in the offer or scheme document and made available on the website of the target and the bidder.

Conditionality and MACs

Offers will typically be made subject to conditions which broadly fall into one of six categories:

1. Acceptance/approval of the offer by target shareholders and, in the case of a scheme, sanction by the court;
2. Conditions giving effect to requirements of law or regulation, or the bidder's constitution (eg, bidder shareholder approval or the listing of bidder securities);
3. A long-stop date or mini-long-stop dates (such as holding the target shareholder meeting within a set number of days of the scheme document being posted) relating to completion of the offer;
4. Bespoke conditions relating to the (non-) occurrence of a specific event in relation to the target (eg, the approval of a management team's incentivisation package pursuant to Rule 16.2 of the Code);
5. Specific or general conditions relating to an official authorisation or regulatory clearance (such as anti-trust or Foreign Direct Investment clearance); or
6. Material adverse change (MAC) conditions.

Conditions of the type referred to in categories 1, 2 and 3 above can be invoked and the bidder's offer lapsed without Panel consent, should they fail to be satisfied.

However, conditions of the type referred to in categories 4, 5 and 6 above can only be invoked with Panel consent, which will normally only be given if the circumstances which give rise to the right for the bidder to invoke the condition are of material significance to the bidder in the context of the offer, taking account of all relevant facts at that time (Rule 13.5 of the Code, supported by Practice Statement 5).

If a bidder is seeking to invoke a specific condition relating to an official authorisation or regulatory clearance, it is likely to have most success where it has made clear to target shareholders in the firm offer announcement and scheme or offer document that it considers the relevant regime to be material and that it would seek to invoke the condition if not satisfied.

In practice, consent will only be granted by the Panel for general conditions and MAC conditions in extreme circumstances. When WPP Group plc requested the Panel's consent to invoke a MAC condition to its offer for Tempus, the Panel refused. In its decision, in which the adverse change in question arose as a result of the events of 9/11, the Panel stated that '... meeting this test requires an adverse change of very considerable significance striking at the heart of the purpose of the transaction in question'.

A notable recent example of the Panel not allowing MAC conditions to be invoked was Brigadier Acquisition Company Limited's bid for Moss Bros Group plc. Here, a firm offer was announced the day after the World Health Organisation declared the COVID-19 disease a pandemic. While the subsequent scheme document referred to the ongoing pandemic, the offer only contained MAC conditions which were drafted generally rather than mentioning lockdowns or COVID-19 specifically. Although the Panel noted the global lockdowns as significant, it did not grant Brigadier the right to lapse or withdraw its offer as it ruled that Brigadier had not established, in line with the Code, that the circumstances were of material significance in the context of its offer. Although not entirely surprising given the foreseeability of the circumstances at the time of the offer and certain actions subsequently taken by the bidder, this ruling demonstrates the high bar for invocation of MAC conditions.



Practice Statement 5 states that in deciding whether the material significance test has been met, the Panel will consider:

- whether the relevant condition was negotiated with the target;
- whether it was expressly drawn to target shareholders' attention;
- whether it was included to take account of specific circumstances;
- foreseeability of the circumstances when the offer was announced;
- the actions of the bidder; and
- the views of the target's board.

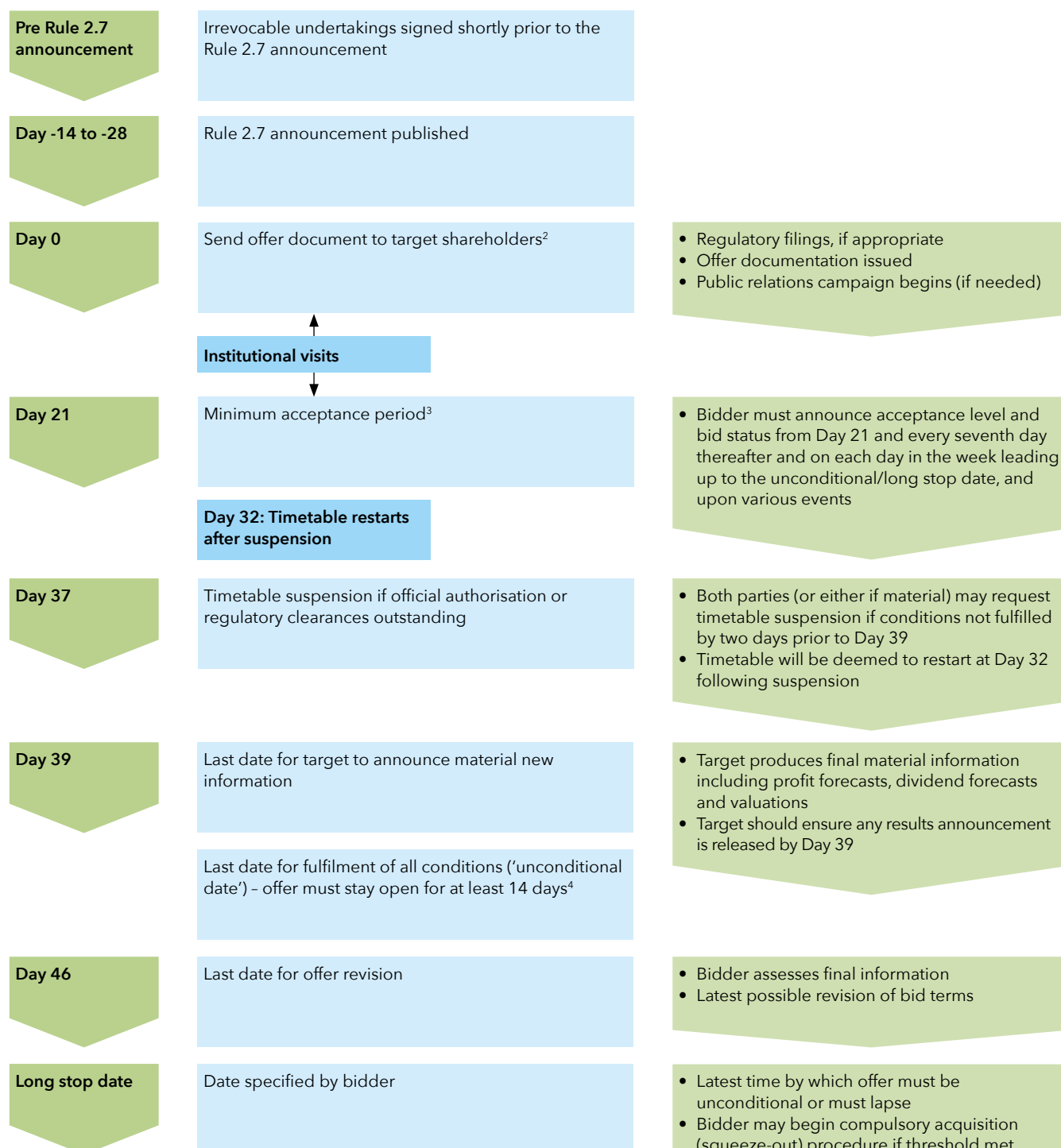
The Code also prevents a bidder from circumventing the material significance requirement by invoking the acceptance condition, which is not subject to this requirement. A bidder wishing to invoke the acceptance condition must serve an 'invocation notice', giving target shareholders 14 days to accept the offer before it lapses.

IFX (UK)'s proposed takeover of Argentex Group is one rare example where the Panel did consent to the bidder invoking a market standard condition, which stated that Argentex and its group companies had taken no steps, and had no steps taken against them, to appoint a receiver or initiate insolvency proceedings to an extent material in the context of the group taken as a whole or in the context of the offer. This condition was specifically drawn to the attention of Argentex shareholders in the firm offer announcement and again in the scheme document, where IFX (UK) stated its intention to invoke the condition with the consent of the Panel should that situation arise. Following the Argentex shareholder vote, special administrators were appointed over one group entity, Argentex was placed into administration and its shares were suspended from AIM. IFX (UK) lapsed its offer with Panel consent.

PHASE 6 – OFFER IMPLEMENTATION

Figure 9: Indicative timetables for a takeover offer and a scheme of arrangement

Indicative takeover offer timetable from posting¹

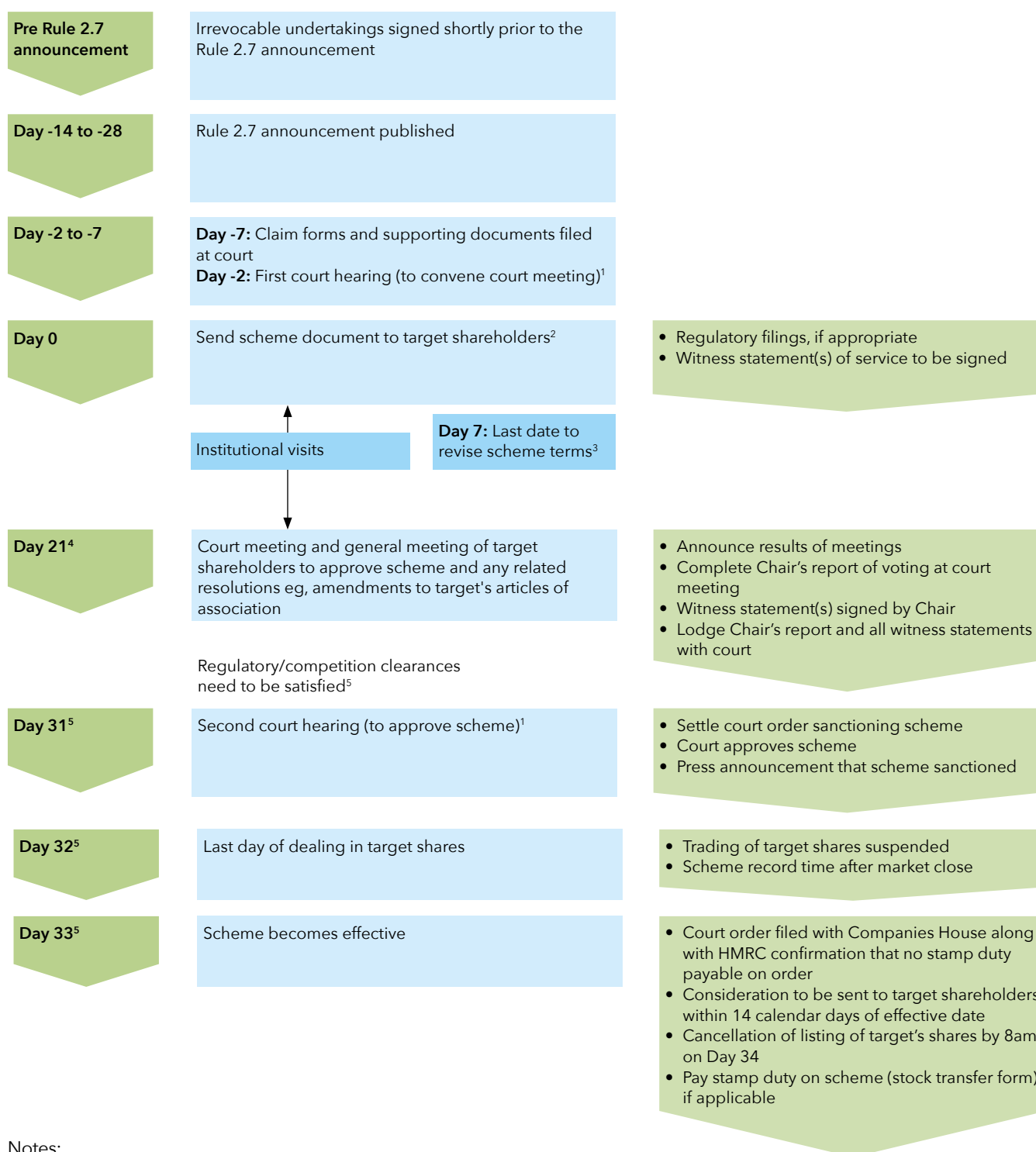


Notes:

- This timetable assumes that there is no competing offer.
- Offer document to be posted within 28 days of the Rule 2.7 announcement (except with the consent of the Panel), but not less than 14 days (unless agreed by the target board).
- A bidder which wishes to invoke the acceptance condition on or after Day 21 and prior to the unconditional date may serve an acceptance condition invocation notice.
- A bidder may bring forward the unconditional date by making an acceleration statement, in which case: (a) it will be required to waive its regulatory conditions; and (b) certain requirements which are normally imposed (including on Day 39) will not be applied.

Figure 9 continued

Indicative scheme timetable from posting



Notes:

1. Actual dates will depend on court availability (which can be harder to arrange over the Christmas, Easter and summer recesses).
2. Scheme document to be posted within 28 days of the announcement Rule 2.7 (except with consent of the Panel).
3. This assumes the court meeting and general meeting are on Day 21 – any revision must be no less than 14 days prior.
4. This is the earliest that the court meeting may be held under the Code. This will depend upon the ability of the target to give valid notice of the general meeting by this date.
5. If there are regulatory conditions to be satisfied, then Day 31 onwards will be deferred until satisfaction or waiver of them.

Completion and squeeze-out of minorities under a takeover offer

If a bidder receives sufficient acceptances under a takeover offer from at least 90% of the shares to which the offer relates (excluding those held by the financial sponsor, its concert parties and, where they are rolling over all or some of their shareholding in the target, the MBO team) it reaches the squeeze-out threshold. The bidder is then entitled to invoke the statutory squeeze-out procedure set out in the Companies Act 2006 to compulsorily acquire the remaining minority shares.

To do this, the bidder must first send out a notice to the non-assenting target shareholders within three months of the day after the last day on which the offer can be accepted. In practice, the bidder (and its lending banks) will want to invoke the procedure as soon as possible. Any shares the financial sponsor buys onmarket (rather than through acceptances of its offer) will count toward the 90% threshold, as long as they are purchased after publication of the offer document and at a price no higher than the offer price. Although shares acquired by the financial sponsor before the offer document is published do not count towards the squeeze-out threshold, shares that a target shareholder commits to sell under an irrevocable undertaking do.

Once the squeeze-out notice has gone out, the bidder must wait six weeks before the remaining minority shares can be compulsorily acquired. During this period, it is possible for target shareholders to seek a court order preventing the bidder from being able to exercise these rights on the basis that the offer is not fair and proper. Such an order is unlikely to be granted unless the shareholders have not been treated equally.

At the end of the six-week period, the remaining shares in the target are transferred to the bidder under the statutory provisions, with the bidder paying the consideration to the target (to be held on trust for the minority shareholders).

The squeeze-out procedure is not relevant on an offer implemented by way of a scheme of arrangement as a scheme secures the acquisition of 100% of the target shares as long as the appropriate approvals are obtained.

Re-registration as a private company

Normally, once the compulsory acquisition procedure has completed (in the case of a takeover offer) or the scheme has become effective, the bidder will re-register the target as a private limited company. This is important because unless the target is re-registered (ie, is no longer a public company) the granting of security to the bidder's lending banks in respect of any acquisition finance facility may constitute unlawful financial assistance by the target for the purchase of its own shares.

Delisting

Under the FCA's Listing Rules (which apply to those companies listed on the Official List) and the AIM Rules (which apply to those companies traded on AIM), not less than 20 business days' prior notice must be given of any intended cancellation of the target's listing and a circular sent to target shareholders. However, this rule does not apply to schemes of arrangement. In relation to a takeover offer, if notice of the proposed cancellation is included in the offer document, no further circular is required, and the 20-business-day period can start running from either the bidder receiving acceptances from shareholders holding 75% of the target's voting shares or the compulsory acquisition procedure commencing. However, the AIM team will require 10 clear business days' notice of suspension starting from the day at which the completion timetable is certain.



OTHER CONSIDERATIONS

Going 'final'

Under Rule 32.2 of the Code, if a bidder makes a statement that its offer is 'final' or will not be increased, improved or similar, then the bidder will not be allowed subsequently to amend the terms of its offer in any way, subject to limited reservations which might be agreed with the Panel. For example, a bidder might reserve the right to increase its offer if a new competitive bid arises after the bidder has gone final.

Employee interests and representatives and the right of reply

Both the bidder and the target must make the offer announcement available to their employee representatives or, if there are none, directly to their employees. The target must inform its employee representatives (or employees) and pension scheme trustees (if any) that they have a right to have a separate opinion appended to the target board circular (which for a PTP will usually be part of the offer or scheme document). The target must pay for the costs of the publication of any such opinion and the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in the opinion.

Where the target has employee share option schemes in place, the holders of options must receive an appropriate offer or proposal to ensure their interests are safeguarded (Rule 15 of the Code). This may include the right to exercise their options and accept the offer, to exchange the options for options in the bidder, or a cash payment for cancellation of the options.

Assumptions made by the financial sponsor on the vesting of any such options should be confirmed in due diligence and, where appropriate on a recommended offer, agreed with the target (typically documented in the cooperation agreement). The extent to which unvested awards can be exercised is usually contained in the relevant share option plan and is subject to the discretion of the target's remuneration committee. The remuneration committee on a

recommended offer will often agree to take into account the extent to which any applicable vesting period has elapsed, and applicable performance conditions satisfied, at the time the transaction completes, but the vesting of awards can become a point of negotiation. The outcome of these discussions on vesting will impact the overall value of the bidder's offer and consequently the amount which needs to be cash confirmed (see Phase 5, Cash confirmation on [page 22](#)). The management team will also be keen to understand the approach adopted on employee share options, as they are likely to hold a significant amount of outstanding options.

Profit forecasts and quantified financial benefits statements

Profit forecasts and quantified financial benefits statements (QFBS) published during an offer period by the target or by a bidder which is offering equity consideration, and profit forecasts that are still current and were published prior to the offer period, are subject to reporting requirements (Rule 28 of the Code, as recently supported by Practice Statement 35). A QFBS is any statement quantifying the financial benefits of the offer if it is successful, or arising in the event the offer is withdrawn or lapses.

If a profit forecast or QFBS is published by the target during the offer period, the document in which it is published must contain:

- a report from its reporting accountants stating that it has been properly compiled and (in the case of a profit forecast) that the basis of accounting used is consistent with the target's accounting policies; and
- a report from its financial adviser stating that, in their opinion, it has been prepared with due care and consideration.

Where such a profit forecast is made prior to the offer period, the forecast must be repeated in the offer or scheme document, and in any earlier offer period document that refers to it, and accompanied by the required reports. If such a forecast is made prior to an

approach, then the party making the forecast may either:

- repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the target's accounting policies (the directors confirmations);
- include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or
- include a new profit forecast for the relevant period and reports from its reporting accountants and financial adviser (as for a new offer made in the offer period).

The rules are less onerous for ordinary course profit forecasts and forecasts for less than 15 months. The Panel may grant dispensations from the reporting requirements in respect of such forecasts. However, it will not normally do so where the relevant offer is an MBO, given the potential for management teams to depress the forecast to achieve a lower offer price. Further, if a profit forecast is published by the target before an approach is made on an MBO, the profit forecast must normally be repeated in the offer or scheme document and include the reports referred to above.

Finally, the Panel would normally treat forward-looking statements for periods ending more than three years from the date they were made as being aspirational, rather than a profit forecast, and therefore statements to which Rule 28 of the Code does not apply.

Asset valuations

The Code contains requirements for an independent valuer's opinion on any asset valuation (being land, buildings, plant, equipment, mineral, oil or gas reserves or certain unquoted investments) given by the target or a bidder offering equity consideration (Rule 29 of the Code):

- during the relevant offer period;
- in the 12 months prior to the commencement of the offer period; or
- more than 12 months prior to the commencement of the offer period, if attention is drawn to that valuation in the context of the offer,

unless the Panel considers that the valuation is not material to target shareholders in making a properly informed decision as the merits of the offer.

If the target or a bidder offering equity consideration publishes or has published, in any of the circumstances referred to above, a net asset value or an adjusted net asset value of the underlying assets of the type referred to above, a valuation of those assets must be published.

Share buying

A very important tactic for consideration in relation to the execution of any PTP is whether the bidder should acquire shares in the target outside the takeover offer or scheme. Most sponsors are unwilling to commit funds until there is more certainty that the PTP will go ahead.

There are several points to be considered:

- Rule 4 of the Code prevents any person (other than the bidder) who has confidential price-sensitive information about the proposed offer from dealing in target shares at any time between the time when there is reason to suppose that an approach or an offer is contemplated and an announcement of an approach or offer or termination of discussions.
- If the bidder has commenced its due diligence on the target and obtained inside information relating to the target (other than the fact that it is contemplating making a bid), it will not be permitted under MAR and insider dealing legislation to purchase shares in the target until at least the announcement of a firm intention to make the PTP. In practice, a bidder will only acquire shares in the target prior to public announcement before due diligence has commenced (out of concern it may become privy to inside information).
- Purchases above certain percentage thresholds will require a disclosure to the market.
- If the bidder (or other concert party members) acquires interests in shares in the target during the offer period or in the three-month period prior to it starting, then the highest price paid by any of them for such interests will, under the Code, set the minimum price that must be offered to target shareholders if a PTP is subsequently announced (Rule 6 of the Code).

- If during the offer period or in the 12-month period prior to that time, these persons acquire in aggregate interests in shares representing 10% or more of the target's shares, then the highest price paid by any of them for such interests during this 12-month period will set the minimum price that must be offered to target shareholders in cash (Rule 11 of the Code).
- Under Rule 9 of the Code, if a person (including a concert party member) acquires interests in shares in the target which takes the combined shareholding of it and its concert party members to 30% or more, then it will be required to make an all-cash bid for the target, where the only condition can be that it obtains acceptances of the bid which takes its combined shareholding to over 50% of the target's shares.
- Where the PTP is to be implemented by way of a takeover offer, any shares in the target acquired by the bidder before the takeover offer is capable of acceptance cannot count towards the 90% acceptance condition required to be satisfied before the statutory compulsory squeeze-out provisions can be implemented.
- Where the PTP is to be implemented by way of a scheme, any shares in the target acquired by the bidder or any of its concert parties at any time cannot be voted on the shareholder resolution required to approve the scheme.
- A bidder who deals in target shares for the purposes of stakebuilding will not commit an offence when the only inside information that it has is its interest in the proposed takeover. However, this will not permit stakebuilding if the bidder has any other inside information, eg, relating to the target's business.

Formal sale processes and private sale processes

In 2011, the Panel introduced the concept of a formal sale process. Where a target announces that it is seeking bidders by way of a formal sale process, the Panel will normally grant dispensations from:

- the obligation to identify each potential bidder; and
- the 28-day PUSU period so long as a bidder is participating in the process (see Phase 3, Indicative offer and considerations for the target board on [page 11](#)).

The Panel will also usually grant a dispensation from the prohibition on offer-related arrangements so

as to allow an inducement fee arrangement with a bidder who has participated in the sale process once a firm intention announcement has been made. The inducement fee must be 1% or less of the offer consideration and must not be payable until an offer is declared unconditional. The target can also request that all participating bidders agree that they will not use Rule 21.3 of the Code to request all due diligence information which has been provided to competing bidders.

Practice Statement 31 introduced a further and more formalised regime for private sale processes, following a perceived reluctance by boards of listed companies to commence a formal sale process (which requires a public announcement). A private sale process is where a company subject to the Code initiates private talks with a number of potential bidders without an announcement. The target's financial adviser will confirm to the Panel that it is running such a process.

As with a formal sale process, the Panel will normally grant a dispensation from the obligation to identify each potential bidder (unless that potential bidder has been specifically identified in any rumour or speculation). However, if a potential bidder is named it will, under the private sale process, still be subject to its own 28-day PUSU period deadline.

Warranty and indemnity (W&I) insurance

In recent years, W&I insurance has become an established feature of many private company sale processes. W&I insurance is an insurance policy, typically purchased by the buyer, which covers the buyer against financial losses resulting from breaches of warranties or claims under indemnities in the sale and purchase agreement (SPA), with the SPA capping the liability of the selling shareholders (typically to £1). Although warranties and indemnities are not typically provided in a public takeover context, financial sponsors may look to explore the possibility of arranging a policy on a synthetic basis (that is, arranging W&I protection directly with the insurer, without an underlying warranty or indemnity from the target's shareholders or its board of directors). However, bidders will want to take into account the time that may be required to arrange such a policy and whether the level of due diligence possible in a public takeover will satisfy the requirements of the underwriters of such policies.

UK securities law

As mentioned earlier (see Phase 5, Responsibility statements on [page 22](#)), directors of the bidder and members of the investment committee of the financial sponsor will typically take responsibility for information provided and statements made in the scheme or offer documentation which relate to the bidder. This responsibility is generally understood to impose a duty of care on these individuals, a breach of which could open them to claims including negligent misstatement or misrepresentation and civil liability in connection with untrue or misleading statements made. However, securities litigation in the UK is still rare (unlike jurisdictions such as the US) and very few cases arising in connection with takeover bids have ever proceeded to trial.

Overseas securities law

The bidder and its advisers should consider whether an offer is being made to target shareholders in non-UK jurisdictions, or whether to do so would be a breach of local securities laws or regulations.

Where securities are offered to target shareholders in connection with an offer, they will also need to consider if a prospectus, registration document or similar in such jurisdictions is required, or whether an exemption applies. Notably, the issuance of securities to US target shareholders under a UK scheme of arrangement is exempt from registration under section 3(a)(10) of the US Securities Act of 1933. Further consideration is often needed on a takeover offer.

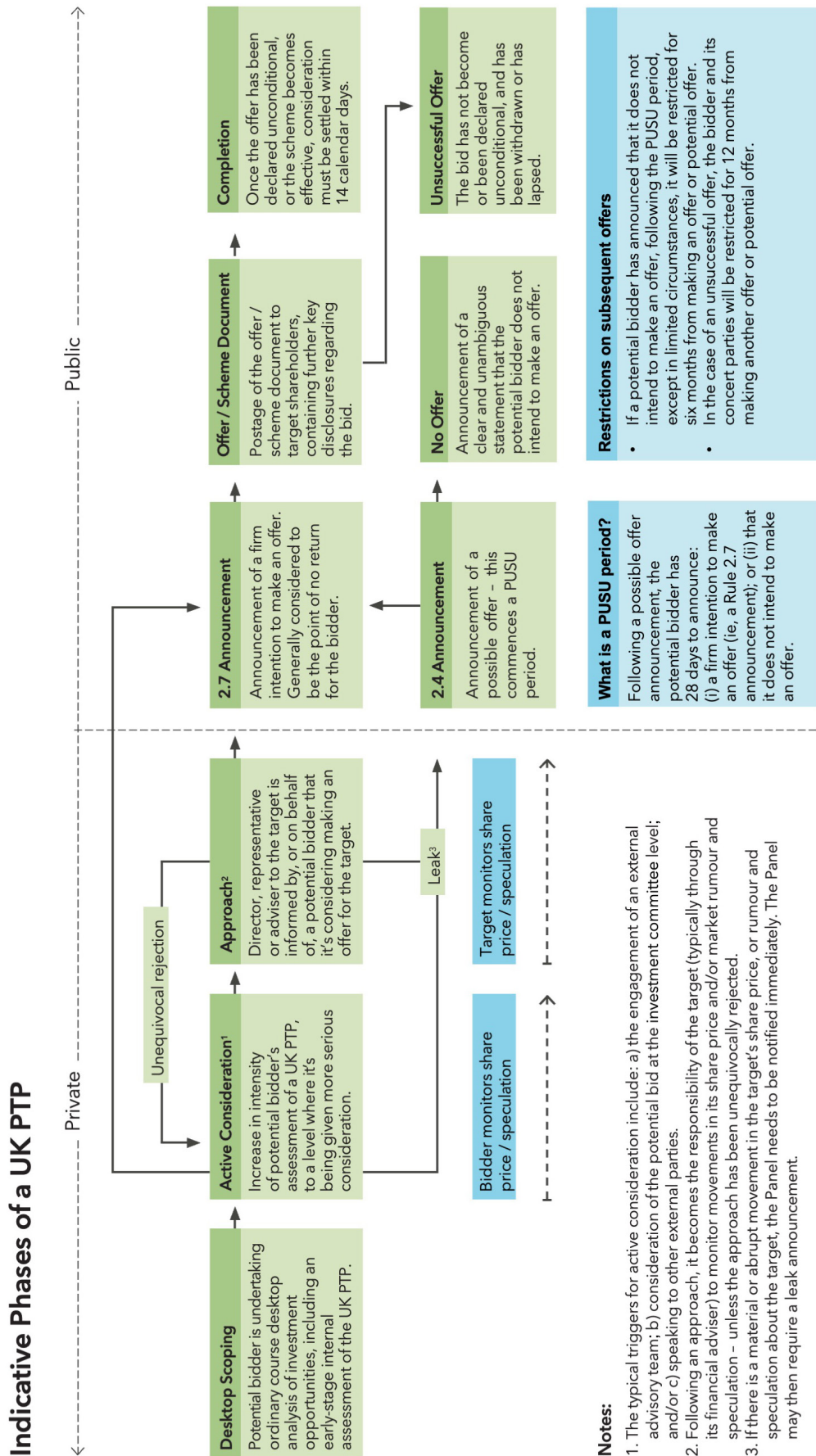
CLOSING REMARKS

PTPs can present valuable opportunities for financial sponsors and management teams. However, these parties must be alive to the inherent execution risks, be prepared to commit to a deal and be ready with committed finance at an early stage in the process.

Given the formality of the process, and the regulatory complexities, it is imperative that bidders have in place the proper legal and financial advice from the very beginning of the transaction.



Schedule 1



What is a PUSU period?
Following a possible offer announcement, the potential bidder has 28 days to announce: (i) a firm intention to make an offer (ie, a Rule 2.7 announcement); or (ii) that it does not intend to make an offer.

Restrictions on subsequent offers

- If a potential bidder has announced that it does not intend to make an offer, following the PUSU period, except in limited circumstances, it will be restricted for six months from making an offer or potential offer.
- In the case of an unsuccessful offer, the bidder and its concert parties will be restricted for 12 months from making another offer or potential offer.

ABOUT THE AUTHORS



Ben Lowen
Corporate Partner
Travers Smith

ben.lowen@traverssmith.com
+44 (0)20 7295 3417

Ben is a Partner in Travers Smith's corporate practice. He works across all areas of corporate law, including public and private mergers and acquisitions. Ben's recent public takeover experience includes advising Inflexion on its takeover of DWF Group plc, IK Partners on its takeover of Medica Group plc, Assura plc on its competitive takeover by Primary Health Properties plc, EMIS Group plc on its takeover by UnitedHealth Group Inc. and Quanex on its takeover of Tyman plc.



Joseph Katz
Partner
PwC

joseph.katz@pwc.com
+44 (0)77 1003 4052

Joseph is a Partner in the PwC Healthcare M&A team, based in London. He has advised on a wide range of healthcare and other transactions, including many public offers, having previously been at Rothschild & Co. Between 2012 and 2014 Joseph acted as Assistant Secretary to the Takeover Panel and oversaw a large number of transactions subject to the Takeover Code. Prior to his career in investment banking, he qualified as a lawyer with Slaughter and May.



Spencer Summerfield
Senior Consultant
Travers Smith

spencer.summerfield@traverssmith.com
+44 (0)20 7295 3229

Spencer is a Senior Consultant at Travers Smith, having previously been Head of Corporate Finance from 2004 - 2013 and Head of Corporate between 2013 - June 2025. His clients include an array of limited companies and sponsors. Recent public takeover experience includes advising Wavenet Group and MPRC Europe on the acquisition of AdEPT Technology Group plc, Basalt Infrastructure Partners on its takeover of Manx Telecom plc, Aggregated Micro Holdings plc on its takeover by Fossa, and Macquarie on its takeover of Premier Technical Services Group plc.



Jonathan Raggett
Director
PwC

jonathan.raggett@pwc.com
+44 (0)77 0267 8193

Jon is a Director in the PwC Corporate Finance team, based in London. He has a broad range of transaction experience, with a focus on public company and capital markets transactions. Jon has worked on many cross-border public takeover bids and mergers as well as a large number of private equity-backed public to private transactions. Jon is a Fellow of the ICAEW.

Chartered accountants are talented, ethical and committed professionals. ICAEW represents more than 210,000 members and students around the world. 98 of the top 100 global brands employ ICAEW Chartered Accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor more than 11,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is working towards becoming net zero, demonstrating our commitment to tackle climate change and supporting the UN Sustainable Development Goal 13.

ICAEW is a founding member of Chartered Accountants Worldwide (CAW), a global family that connects over 1.8m chartered accountants and students in more than 190 countries. Together, we support, develop and promote the role of chartered accountants as trusted business leaders, difference makers and advisers.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

[charteredaccountantsworldwide.com](https://www.charteredaccountantsworldwide.com)
[globalaccountingalliance.com](https://www.globalaccountingalliance.com)

ICAEW

Chartered Accountants' Hall
Moorgate Place
London
EC2R 6EA UK

T +44 (0)20 7920 8100
E generalenquiries@icaew.com
[icaew.com](https://www.icaew.com)

ABOUT THE CORPORATE FINANCE FACULTY

The Corporate Finance Faculty is ICAEW's centre of professional expertise in corporate finance. It contributes to policy development and responds to consultations by international organisations, governments, regulators and other professional bodies. It provides a wide range of services, information, guidance, events and media to its members, including its highly regarded magazine *Corporate Financier* and its popular series of best-practice guidelines.

The three major themes for the faculty's initiatives are: Global Investment and M&A; Innovation and Sustainable Growth; and Future Advisory Professionals.

The faculty's international network includes member organisations and individuals from major professional services groups, specialist advisory firms, companies, banks and alternative lenders, private equity, venture capital, law firms, brokers, consultants, policymakers and academic experts. More than 40% of the faculty's members are from beyond ICAEW.

T +44 (0)20 7920 8902
E cff@icaew.com



* includes parent companies. Source: ICAEW member data March 2025, Interbrand, Best Global Brands 2024