

ashurst

UK Guide to Takeovers



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Foreword

In the post-financial crisis world, public M&A transactions are becoming increasingly complex and harder to execute. Regulators, shareholders and other key stakeholders are also taking a keener interest in the way in which takeovers and mergers are conducted.

Ashurst's Guide to Takeovers is therefore an invaluable resource for companies and their advisers who are involved in these sorts of transactions, explaining not only the broad principles of takeover regulation in the UK but also the nuances of the Takeover Code and of relevant law and regulation.



Robert Gillespie

*Director General of the Takeover Panel (2010 – 2013)
Independent Board Director of Ashurst LLP*

About Ashurst

Ashurst is recognised as having one of the City's highest quality corporate practices. With over 100 partners across Europe, Asia, Australia and the Middle East providing advice on public M&A transactions across our client industry sectors, Ashurst has the strength, depth, sector knowledge and jurisdictional reach to provide quality advice to the world's leading organisations.

We provide our corporate and banking clients with the best technical and commercial advice on all aspects of public M&A. While there are many law firms that have technical capability in M&A, very few can claim a leading position in M&A combined with our highly developed deal execution and risk management skills. The sheer volume of deals in which we are involved exposes our M&A team to an array of issues across different sectors, jurisdictions and practice areas, and allows us to provide cutting-edge advice.

Our reputation on M&A transactions is not only that our lawyers have a strong track record of advising on high-value transactions, but also that they advise the most sophisticated and dynamic clients on the most high-profile and technically challenging deals in the market. On public M&A we have extensive experience of acting for both bidder and target, as well as the financial advisers, thereby understanding the issues and complexities from all angles.

We believe our offering is compelling because we have the following key strengths:

- Experience of complex cross-border public M&A transactions;
- A large team of skilled practitioners with depth and breadth across a range of sectors and geographies (including 3 ex-Takeover Panel Secretaries);
- A large roster of London Stock Exchange and AIM clients; and
- Strong relationships with investment banks.

Introduction

This Guide provides an insight into the regulation of takeovers of public companies in the UK.

It covers:

- the regulatory framework governing takeovers of UK public companies;
- issues arising in the preliminary stages of a bid (including the different structures that can be used to implement a takeover);
- merger control and other regulatory issues;
- stakebuilding and irrevocable commitments;
- communications with shareholders and others;
- issues arising on a hostile bid; and
- completing a bid, delisting and squeeze-out.

It does not cover tax structuring considerations, accounting issues or the impact of overseas securities laws.

For more detailed advice on any of the matters covered in this Guide and in particular for advice on the more practical and tactical issues that arise on a takeover of a UK public company, please consult your usual Ashurst contact.

Executive Summary

- Directors of the bid parties have a responsibility to ensure that the Code is complied with during an offer
- Secrecy is paramount prior to announcement - information regarding an offer should only be communicated on a “need-to-know” basis and only if the recipient is aware of the need for secrecy - codenames must always be used in the initial phase
- A leak regarding a possible bid will normally trigger an announcement of a possible offer pushing the target company into an offer period
- Information released during the course of an offer must meet the highest standards of care and accuracy, must be adequately and fairly presented and must not be misleading or omit material facts
- Target shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits of an offer
- Any document issued to shareholders by a party to an offer must contain a statement to the effect that the directors of that bid party accept responsibility for the information
- The target board must obtain independent advice on an offer from its financial advisers and communicate that advice to target shareholders
- Information about the parties to an offer must be made equally available to all target shareholders at the same time and in the same manner
- The supply of due diligence information must be strictly controlled as any information given to one bidder or potential bidder by the target must be made available on request to any other bidder or bona fide potential bidder
- The target board must not take any action which may frustrate an offer unless prior target shareholder approval is obtained or the consent of the Takeover Panel is sought - the target board should not sanction anything outside the ordinary course of business once a bid is in contemplation
- There should be no dealings in price-affected shares, options or related derivatives by the parties to an offer and their directors or families or anyone that knows about a proposed offer without prior consultation with professional advisers
- Except with the Panel’s consent, no arrangements with favourable conditions (special deals) should be made by a bidder or its concert parties with selected target shareholders which are not also extended to all other target shareholders

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. The position stated is as at February 2016. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at Ashurst LLP, Broadwalk House, 5 Appold Street, London EC2A 2HA T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 www.ashurst.com

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