**Post-takeover issues**

This element looks at steps which parties may choose to take once a takeover bid has completed.

**Offers: compulsory acquisition procedure**

S. 979 CA 06 is a crucial part of the legal landscape in a contractual offer: it provides the procedure whereby the bidder may ‘squeeze-out’ the remaining target shareholders in order to be able to achieve 100% ownership.

In order to be able to invoke this compulsory acquisition procedure, the bidder must satisfy a dual test (although generally these are the same).

Under s.979(2) CA 06, the bidder may compulsorily acquire the remaining shares to which the offer relates if it has received acceptances in relation to:

(a) ‘not less than 90% in value of the shares to which the offer relates’; and,

(b) ‘not less than 90% of the voting rights carried by those shares…’

It is important to note that this 90% threshold excludes shares bought by the bidder in the target prior to making its offer i.e. before it publishes its offer document (s. 974(2) CA 06). (This is likely to be a different date to the start of the offer period.) It can, however, include shares which are subject to irrevocable undertakings (s.975 CA 06).

Shares bought by the bidder after the date of the contractual offer (i.e. once the offer document has been published (Day 0)) are normally included in the calculation for the compulsory acquisition, provided that the shares are not purchased or agreed to be purchased for more than the offer price (see ss. 979(8) and (10) CA 06), which will normally be the case in a Takeover Code offer.

The compulsory acquisition procedure reflects the reality that, having reached the 90% threshold, the bidder has, in effect, won control of the target and should be allowed to buy out the outstanding minority, even if this is against their wishes. In addition, this procedure ensures that any dissenting minority is treated fairly by receiving the same consideration for its shares as accepting shareholders.

If a company has shares listed on a regulated market, notices under s.979(2) CA 06 must be served on all of the remaining shareholders by the expiry of the period of three months beginning with the day after the last day on which the offer can be accepted (s.980(2)(a) CA 06).

When repurchasing its own listed shares, a company may choose to hold those shares itself. These shares are said to be held as treasury shares. The definition of ‘shares’ for the purposes of the compulsory acquisition procedure (see s. 974(4) CA 06) excludes treasury shares unless expressly included in the contractual offer.

**Offers: sell-out procedure**

Under s.983(2) CA 06, if the bidder makes a contractual offer and, due to acceptances, holds shares which, with or without any other shares which the bidder has acquired:

1. amount to not less than 90% in value of all the voting shares in the company; and

2. carry not less than 90% of the voting rights in the company

then a minority shareholder may require the bidder to acquire its shares in the target (otherwise known as the ‘sell-out’ procedure). The phrase ‘shares to which the offer relates’ is not relevant to the ‘sell-out’ procedure and it is not necessary to distinguish when the bidder acquired its shares in the target.

Usually the target is de-listed from the Official List following a successful takeover and its shares are therefore no longer quoted on the London Stock Exchange. As a result those target shareholders who did not accept the contractual offer will not be able to sell their shares easily in the future, as the market for unlisted shares is very limited. They are therefore given a final chance to compel the bidder to buy out their shares once the takeover has succeeded should the bidder not have invoked the compulsory acquisition procedure under s.979 CA 06 already.

This provision is rarely employed in practice as the bidder is generally keen to facilitate acceptance by as many target shareholders as possible in order to reach the relevant threshold to invoke the compulsory acquisition procedure.

**De-listing**

If the target company is a listed company, it is very likely that the bidder will wish to remove the shares of the target from the Official List once the bid has completed and consideration has been settled with the selling shareholders.

Note that, if the target company can no longer satisfy its obligations to have 10% of shares in public hands at all times (UKLR 6.2.22), it **must delist its shares** (or risk sanction by the FCA for breach of the UKLRs). This would be the case where the bidder had effected its bid by way of a scheme as this results in the bidder holding 100% of the shares in the target at completion.

The procedure to be followed to delist the target will depend on the path the transaction has taken to date.

**UKLR 21.2.8: delisting with shareholder approval (non-takeover situation)**

A company wishing to delist must obtain a special resolution (, 75% of shareholders present and voting at a shareholder meeting must approve a listed company’s delisting under UKLR 21.2.8(2)(a).

Where the company has a ‘controlling shareholder’ (with 30% or more of the voting rights), there must be an additional vote to approve the delisting which requires a majority of the votes attaching to the ‘independent shareholders’ voted on the resolution (i.e. excluding the controlling shareholder). Given that any such vote following a takeover would always take place after the bidder had become a controlling shareholder, this requirement would make obtaining approval to delist difficult in practice. However, UKLR 21.2.8 does not apply in the context of a takeover offer or a scheme.

The process which is generally followed in a takeover offer situation is set out in UKLR 21.2.11 which addresses the situation where the bidder was interested in 50% or less of the company’s voting rights at the time it announced its firm intention to make an offer.

**UKLR 21.2.11: delisting in the context of a takeover offer (50% or less)**

This option applies where the bidder held 50% or less of the target’s shares before the firm intention announcement was made.

Shareholder approval for delisting under UKLR 21.2.8 is not required when:

* (1) the offeror or any controlling shareholder who is a offeror is interested in 50% or less of the voting rights in the issuer before announcing its firm intention to make an offer;
* (2) the offeror has, by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued share capital carrying 75% of the voting rights of the issuer (note that this **can include** target shares owned by the offeror prior to the offer); and
* (3) the offeror has stated in the offer document that a notice period of not less than 20 business days prior to cancellation will commence either on the offeror obtaining the required 75% voting rights or on the first date of issue of compulsory acquisition notices under s.979 CA 06.

**UKLR 21.2.14: delisting in the context of a takeover offer (over 50%)**

UKLR21.2.14 addresses the question of a delisting where the bidder owned over 50% of the voting rights in the target at the time it made its firm intention announcement. The process is similar to that described above but, in addition, requires acceptance of the offer by a majority of independent shareholders who held shares at the time the firm intention announcement was made.

**UKLR 21.2.19: delisting in the context of a scheme of arrangement**

UKLR 21.2.19 expressly states that UKLR 21.2.8 does not apply to the cancellation of the listing of a company which has been the subject of a takeover by way scheme of arrangement under Part 26 CA 06.

This is logical because, following completion of the scheme, the bidder holds 100% of the shares in the scheme so there is no need to seek approval from other shareholders. The target company can simply apply to the FCA to delist its shares.

**Reregistering as a private company**

Once a company has de-listed, it remains a public limited company (plc).

However, after de-listing, a bidder may choose to convert the target company from a public company to a private company under the procedure set out in ss.97-101 CA 06. Reasons to do this include:

1. to reduce the level of regulatory burden on the target company;
2. to enable the target company to undertake a buy back of shares out of capital;
3. to enable the target company to undertake out-of-court reductions of capital; or
4. to enable the target group to provide financial assistance (e.g. security over its assets) which may be a term of any debt finance incurred by the bidder in making its bid.**Unsuccessful offers and schemes**

Unless the Panel consents to an extension of the timetable (Rule 31.3), if a contractual offer has not become or been declared unconditional by midnight on Day 60, it has failed. All the target shareholders who ‘accepted’ the contractual offer will still be the owners of their shares as the conditions of the contractual offer have not been satisfied. Their share certificates will be returned to them within 7 days or (if they hold shares through CREST) their shares will be released from escrow in the CREST system (see Rule 31.10). A scheme which does not become effective in accordance with its terms (for example, because it does not secure the necessary shareholder consents) has also failed.

Although expressed in the language of a takeover offer, Rule 35.1 applies both to offers and schemes:

‘…..where an offer has….not become or been declared unconditional and has been withdrawn or has lapsed neither the bidder, nor any person who acted in concert with the bidder….may within 12 months from the date on which such offer is withdrawn or lapses….announce an offer or possible offer for the target company…..’

**Summary**

* Once a takeover offer is complete, the bidder may choose to ‘squeeze out’ the remaining minority shareholders using the s. 979 CA 06 compulsory acquisition procedure.
* Under s. 983 CA 06, a minority shareholder can force a bidder who has 90% of the target to purchase their shares.
* The procedure for delisting the target (if it is a listed company) is set out in UKLR 21.2.
* It is very common for a listed target to be reregistered as a private company once it has been delisted. This reduces the level of regulation which applies to it, including allowing it to give financial assistance.
* Where an offer or a scheme is unsuccessful, neither the bidder nor a person acting in concert with the bidder may make a bid for 12 months.