**Introduction to takeovers**

This element outlines the two key structures through which a takeover can be executed. It then goes on to discuss the parties and advisers in a takeover.

**Introduction**

Takeovers are often referred to as ‘public M&A’ (mergers and acquisitions), which reflects the fact that the target of the takeover is a public company.

Takeovers can be either recommended (which means that the board of the target company recommends the offer to its shareholders) or hostile (which means that the target board does not recommend the offer to its shareholders). A takeover can begin hostile and subsequently become recommended (e.g. as a result of an increased offer price) and vice versa. Hostile takeovers are less common than recommended takeovers due to the higher risk and expense involved.

Schemes of arrangement are often used as an alternative to making an offer when structuring a recommended takeover. In fact, schemes have become more common than contractual offers in practice. A scheme involves the target company making an application to the court: this means that it is not generally an appropriate structure for a hostile takeover (where the offeree board is uncooperative/unwilling to apply to court). Schemes of arrangement are discussed in more detail in their own element.

**What is a takeover?**

Takeover v Acquisition

A takeover is where a person, company or other entity takes control of a ‘target’ company by purchasing a majority holding in the company’s shares from its shareholders. In practice, the term ‘takeover’ usually refers to a takeover of a public company, rather than a private company which is generally referred to as an acquisition.

Takeover v Merger

This terminology is often used interchangeably, depending upon the impression of the transaction that the acquirer wants to create. A ‘merger’ implies greater equality in the change of ownership of a company than a takeover. Generally, a deal is described as a merger if it involves a share for share offer where the offeror and the target are of roughly equal size.

In reality, there are very few ‘true’ mergers in the UK. In reality, almost all so-called mergers are in fact structured as an acquisition of one company by the other (i.e. the same as any other takeover). The term ‘merger’ (or sometimes ‘merger of equals’) is often used (loosely) for presentational purposes, particularly to make the transaction more palatable for the target shareholders. The Equity Finance workstream focuses on takeovers.

**Commercial rationale for takeovers**

* To increase profitability/long term growth of the offeror, e.g. by acquiring a successful company.
* To reduce costs over time, e.g. a manufacturer takes over its supplier.
* To consolidate market position e.g. by buying a competitor. (NB parties must take care to observe all anti-trust rules).
* To break into new markets (e.g. abroad) or to diversify existing operations.
* Opportunism, e.g. target company is undervalued by the stock market, is being badly managed, or faces particular financial difficulties.

\* The Code was updated in 2023 in respect of corporate rescues which we do not cover on this knowledge stream.

**Parties and advisers involved: offeror/bidder**

This is the party making the offer/bid. It can be a company, a group of companies, an individual or a combination of these. The strategy of the offeror will, if it is a company, be determined by its directors. The offeror(s)/bidder(s) can be of any nationality (or nationalities). Relative to other major markets, the UK generally has a reputation for promoting and welcoming inward investment from overseas bidders.

If there is more than one party involved in a potential bid, bear in mind that rules governing concert parties and acting in concert may apply.

**Parties and advisers involved: offeror/bidder’s shareholders**

Consent to the offer may be required from the offeror/bidder’s shareholders:

1. if local law or regulation requires the transaction to be approved, for example, because the bidder is a listed company; and/or
2. (whether or not the bidder is a listed company) if the offer consideration includes shares, the bidder may need to pass resolutions to implement its bid e.g. by seeking authority to allot.

**Parties and advisers involved: offeree/target, directors, shareholders**

The offeree, or target, is the company which is the subject of the takeover.

The target company directors decide whether to recommend the offer to the target (offeree) shareholders. They will conduct negotiations (if any) with the bidder and they must take legal responsibility for the accuracy of the information relating to the target contained in the takeover documents.

The target shareholders determine the success or failure of the offer as they own the shares in the target. The offer is made to them and communications from both the bidder and the target directors are directed to these shareholders.

**Parties and advisers involved: investment banks for the bidder and target**

The bidder’s investment bank will act as the bidder’s financial adviser; it will finalise the offer price and arrange the financing of the takeover. It will also be involved, from the early days of the transaction, in monitoring the target’s share price in case of untoward movements, in the drafting of the takeover documentation with the bidder’s lawyers and, if the offer is to be made in cash (or partly in cash), it will provide confirmation that the bidder has the resources available to satisfy the cash element of the offer in full.

The target board is required to take independent financial advice on whether the financial terms of the offer are fair and reasonable and the substance of such advice must be made known to the target’s shareholders (Takeover Code Rule 3.1). The target’s investment bank is consequently known as the ‘Rule 3 adviser’.

Both the bidder’s and the target’s financial advisers will advise their clients on tactics and strategy during the takeover. The financial adviser will be the primary contact point between the party and the Panel and will advise on Code issues (with assistance from the lawyers).

**Parties and advisers involved: brokers and accountants for the target**

The brokers are responsible for advising on a suitable offer price, acting as their client’s ‘eyes and ears’ in the market by providing information on market reaction to the takeover and perhaps buying target company shares in the market for the bidder.

The accountants prepare the required financial information for inclusion in certain key takeover documents. They may also be required to prepare a report in relation to any profit forecast, quantified financial benefit statement or asset valuation contained in the takeover documentation.

**Parties and advisers involved: lawyers and PR advisers for the bidder and target**

The lawyers work closely with the investment bank in terms of the strategy and tactics of the transaction. They prepare the takeover documentation in conjunction with the investment banks. They undertake verification to ensure the accuracy of the contents of such documents to minimise the risk of legal liability. They also advise on legal and regulatory issues arising out of a takeover (e.g. matters relating to the Panel, Takeover Code and competition law issues).  
Where a takeover is being undertaken by way of a scheme of arrangement, a barrister will also be involved on behalf of the target in approving drafts of court documents and appear in court.

The bidder and target will also often employ public relations advisers to ensure favourable coverage of their respective client’s position in the media. This is particularly important during a hostile takeover.

**Parties and advisers involved: receiving agents for the bidder**

The receiving agents receive and process acceptance forms from target shareholders accepting the takeover offer, pay any cash consideration to target shareholders and, on a share for share offer, deal with the issue of shares and share certificates once the takeover is successful.

**Summary**

* Takeovers are often described as ‘Public M&A’. True mergers are very unusual in the UK.
* Takeovers can be effected by way of contractual offer or scheme of arrangement: the scheme is the most commonly employed model.
* The purchaser is known as the offeror or bidder; the company being purchased is known as the offeree or the target.
* Both bidder and target engage a range of advisers who advise on matters such as valuation, due diligence and takeover tactics.
* It is a requirement of Rule 3 of the Takeover Code that the target engage a financial adviser to advise on the financial terms of the bidder’s offer; they are known as the ‘Rule 3 adviser’.