



Public Company Takeovers in the United Kingdom

By: James Channo and Leon Miller

The UK Takeover Code ("Code") has undergone a number of changes in response to concerns about the ease with which unwelcome bidders can successfully acquire UK targets. Following the Kraft takeover of Cadbury in 2010 there was a political backlash against overseas bidders buying up UK companies, especially those with iconic brands such as Cadburys.

Although the changes made in September 2011 to the Code have strengthened the position of the target board, many of the proposed changes that would have made a public bid much more difficult were not ultimately adopted. The UK still remains a relatively benign jurisdiction for overseas bidders with much less deal execution risk on the whole than elsewhere.

A free market philosophy very much underpins the UK approach to public M&A and compared with other parts of Europe and other parts of the world there is no history of protectionism. There is generally very little governmental intervention in takeovers, with the exceptions to this being the defense and media sectors which are subject to national security and public interest tests.

In 2012 52% of bidders were based outside the UK and by far the highest number of these were incorporated in the US, representing a total deal value of £2.835 billion. It is expected that the uncertainty in the Eurozone will continue or some time and as a result many buyers in the UK and Europe are deferring acquisitions until greater clarity on the Eurozone emerges. This is very much to the benefit of other overseas buyers who face less competition for quality UK companies and their assets.

There are many reasons why UK targets are attractive to overseas bidders, some of which are highlighted below:

- The Code provides a structured process for undertaking a UK takeover. In the case of recommended offers, bidders can acquire control of their targets in a relatively short timescale, thereby minimizing cost.
- The general principles that underpin the Code are very much focused on protecting the interests of target shareholders and affording them equal treatment. Litigation is therefore rare.
- Despite the fallout following the Kraft takeover of Cadburys, the UK government and authorities do not on the whole interfere, politically or otherwise, in takeovers and do not actively seek to "protect" UK companies from foreign takeovers. This contrasts with the approach adopted in other jurisdictions such as China, Australia and to a lesser extent in other EU states such as France, Germany and Italy for example.
- The Code ensures that management of the target companies do not deprive shareholders of an opportunity to decide on the merits of the bid. Unless shareholder consent is obtained, management are prohibited from adopting "poison pill" tactics (such as acquiring or disposing of material assets, entering into material contracts, or issuing new shares or options for example) to fend off unwanted bidders.
- Management usually heed to the wishes of institutional shareholders and tend not to ignore the general consensus amongst the shareholder base unless they have very good reason to. The target board is required to take independent advice on the merits of the bid and make the substance of that advice known to shareholders. Even if management decide not to recommend a bid it is ultimately shareholders that decide whether or not to accept the offer.
- There are a large number of midcap companies below the US\$200 million market cap listed on the London markets including 1,200 listed companies below the US\$100 million market cap whose relatively smaller size should make funding acquisitions easier.



- Rigorous disclosure and transparency regulations mean that a light touch approach to due diligence can usually be adopted as most listed companies will already have made public relevant information about its assets.
- In the case of recommended offers bidders can obtain 100% control of the target by using a scheme of arrangement as opposed to a contractual offer.

Locke Lord's London office has a wealth of experience advising on public M&A deals. We are very happy to discuss with you the process for undertaking a bid for a public company in the UK and answer any questions you may have. We can introduce you to investment bankers or other financial advisers in the UK or the US who can also assist you.

Some public M&A transactions members of our London office have worked on include:

- Vega Group plc - advising on the £69 million recommended offer by Finmeccanica SpA.
- Sondex plc - advising on the £290 million recommended offer by General Electric.
- Merchant Securities Group plc - advising on the £12.2m recommended cash offer from Sanlam Private Investment Holdings UK Limited.
- General Medical Clinics plc – advising on the £3.7m recommended cash offer from St Martins Healthcare Limited, a subsidiary of HCA Holdings Inc.
- Atlas Estates – advising on the mandatory cash offer by Fragiolig Holdings Limited.
- Chelford Group PLC – advising on the £16m recommended cash offer by Solarsoft Business Systems.
- IMImobile - advising on the £15m recommended offer for WIN PLC.

Changes to the Code in 2013

Since September 2011 there have been further changes to the Code. These are: (i) amendments to the residency test so that the Code will apply to more companies; and (ii) the award to pension scheme trustees of similar rights to those enjoyed by employee representatives.

Residency Test

With effect from 30 September 2013 the residency test set out in section 3(a)(ii) of the Introduction to the Code will no longer apply to offers for companies which have their registered offices in the UK, the Channel Islands or the Isle of Man and which have securities admitted to trading on a multilateral trading facility (such as AIM or the ISDX Growth Market) in the UK. AIM and ISDX companies whose place of central management and control is overseas will therefore be subject to the Code in the autumn.

The residency test will still apply to companies whose registered office is in the UK, the Channel Islands or the Isle of Man but whose securities are admitted to trading solely on an overseas market, as well as certain other categories of companies.

Pensions

With effect from 20 May 2013 the trustees of the target's defined-benefit pension scheme have the right to have their opinion on the effects of the bidder's offer published alongside the target board's circular to shareholders.

The offer document must also include a statement of the bidder's intentions with regards to employer contributions (including the current arrangements for funding of any scheme deficit), the accrual of benefits for existing members and the admission of new members to the target's defined-benefit pension scheme.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors:

James Channo | +44 (0) 20 7861 9042 | jchanno@lockelord.com

Leon Miller | +44 (0) 20 7861 9032 | lmiller@lockelord.com