

The new landscape of the UK takeover regime



Changes to the Takeover Code explained

The acquisition of Cadbury plc by the US-based Kraft Food Inc. caused a public debate in respect of the UK takeover regime. Some market participants were of the view that the UK takeover regime made it too easy for bidders, in particular hostile offerors, to acquire UK companies. In addition, some commentators felt that the outcome of offers can be influenced unduly by the actions of the so-called 'short-term' investors who only become interested in the shares of an offeree company after the possibility of an offer has been publicly announced.

This debate resulted in the takeover regulatory body, The Panel on Takeovers and Mergers, undertaking a public consultation to seek views on various suggestions for possible amendments to the Takeover Code. The changes to the Takeover Code came into effect on 19 September 2011. Certain of the key changes are likely to have a significant impact on market practice which will alter the approach adopted by all parties in relation to UK public company takeovers and mergers.

Key amendments to the Takeover Code	Our views
Publicly naming potential offerors - an announcement by an offeree company which commences an offer period will be required to identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected), except where a Panel dispensation has been granted.	Offerors normally do not want to be named publicly at an early stage of a transaction for various reasons including reputational as well as commercial and tactical considerations. Given the current economic climate, the proposed changes may deter some potential offerors, at least initially until practitioners and corporates adjust their bid tactics to fit in with the new regime.
Fixed "put up or shut up" deadline - an automatic requirement on publicly named potential offerors to either announce a firm intention to make an offer or walk away (more commonly known as "put up or shut up") within a fixed period of 28 days, unless offeree and offeror make joint application to the Panel to extend this deadline.	Will cause some potential bidders to consider very carefully the consequences and risks to it of making an approach to a target company, in particular, where there could be differences in opinion between the offeror and offeree boards and there is likely to be an unwillingness from the offeree board to apply for a deadline extension.
General prohibition on offer-related arrangements - deal protection measures, other than in certain limited circumstances, will be prohibited. Previously, it was common practice for deal protection measures such as an inducement fee to be provided by offerees to offerors. The prohibition of such protectionist measures will enable the position of strength to be 'shifted' from the offeror to the offeree company in a bid situation.	May have the effect of deterring certain offerors, particularly foreign bidders, who are normally unfamiliar with the regulatory landscape in another jurisdiction and may want some protection to mitigate some of the risk before embarking on a potential takeover.

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<p>Disclosure of offer-related fees as well as additional financial information - in order to increase transparency and the quality of disclosure in the bid process, there is now a requirement to disclose an estimate of aggregate fees and expenses to be incurred in relation to an offer, with a breakdown of the costs for each adviser. This information is to be disclosed by both offeror and offeree.</p> <p>In addition, detailed financial information on an offer and the financing of an offer will need to be disclosed in all offers regardless of the consideration being paid to shareholders. Previously, cash bidders were generally required to provide less financial information on themselves.</p>	<p>We are generally in favour of improving transparency in a bid process. However the impact of disclosing advisory fees in such detail remains to be seen. It may result in advisers ‘adjusting’ their fee levels to fit in with market rates, increasing competition in the advisory market over time or it may lead to an overall increase in advisory fee as some advisers realise that their fee levels have been below the norm.</p> <p>The requirement to disclose additional information as part of the offer documentation, keeping in mind the 28 day “put up or shut up” deadline, will impose a further burden on companies as more time is consumed in complying with the additional disclosure requirements.</p>
<p>Improved disclosure of bidder’s intentions regarding the target and its employees - the new amendments have been made to improve the quality of disclosure by bidders and targets in relation to the intentions of the bidder regarding its plans for the offeree company and its employees, the likely repercussions on employment and the locations of the offeree company’s place of business, its intentions regarding the redeployment of fixed assets and its intentions regarding the maintenance of any existing trading facilities for the shares.</p> <p>In the absence of a specific time period, such statements will have to be adhered to for a period of 12 months after the end of the offer period. However, the Panel will consider a “material change in circumstances” in considering whether a particular party to an offer can be released from adhering to such statements.</p>	<p>Bidders will need to invest more time in formulating the post-acquisition strategy prior to launching a bid and this will need to be set out more clearly in the offer documentation than is perhaps currently the case.</p> <p>The new changes are also likely to increase the responsibility on financial and legal advisers with regards to the content of the offer documentation. It is likely that advisers would be expected to challenge statements made by their clients, more than is currently the case, to ensure statements made as part of an offer are being made with due care and accuracy and can be relied upon shareholders.</p>
<p>Improving the ability for target employee representatives to make their views known - under the new regime, it will now be expected that offeree company’s employee representatives are allowed to give their views on takeover offers and any costs incurred in seeking legal advice in coming to those views would be borne by the offeree company.</p>	<p>The provision for the employee representatives’ opinion to be included as part of the offer documentation existed prior to the new changes coming into effect. However, the recent changes to the Takeover Code give this matter further prominence. We expect the occurrence of the publication of employee representative’s opinion during an offer process to increase over time.</p>

So how will these changes impact future takeovers?

The revised Takeover Code will create a new landscape for bidders, targets and their advisers in the public company M&A arena. We believe that interested parties will be keeping a close eye on the first few transactions that take place in this new era of the takeover regime in the UK as these are likely to set precedents for future transactions.

One would hope that, in the long term, the new takeover regime will not deter offerors from undertaking M&A activity in the UK, albeit there may be some 'adjusting time' required to get comfortable with the new market practices. We believe that most acquisitive entities are likely to continue to focus on the fundamentals of a deal, assessing the commercial, financial and operational aspects such as potential synergistic benefits, cost-savings, valuations and the opportunity to enter into new markets when deciding whether to pursue an acquisition opportunity and that should continue to be the case notwithstanding the new takeover rules.

We do however expect the revised Takeover Code to change the bid strategy and tactics normally deployed by bidders when contemplating an offer. For example, potential bidders are likely to conduct more preparatory work than is perhaps currently the case prior to approaching target companies. In addition, bidders are also likely to consider the risk factors associated with pursuing an offer without deal protection measures more carefully and this may result in potential downward adjustments to bid premia to reflect this added risk.



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A selection of public company M&A transactions

<p>Elder Pharmaceuticals Ltd</p>  <p>Cash offer by Elder through its Dubai subsidiary for NeutraHealth plc via a Scheme of Arrangement</p> <p>Grant Thornton acted as Financial Adviser to Offeror</p>	<p>Nviro Cleantech plc</p>  <p>Offer for Southbank UK plc</p> <p>Grant Thornton acted as financial adviser</p>	<p>Environmental Property Services Plc</p>  <p>Acquisition of EPS Plc Re-registration as a private company</p> <p>Grant Thornton acted as financial adviser</p>	<p>Housing 21</p>  <p>First public takeover offer by a non-profit organisation for a listed company, Claimar Care Group plc</p> <p>Grant Thornton acted as financial adviser</p>	<p>Dowgate Group plc</p>  <p>Unilateral offer by Astaire Group Plc</p> <p>Grant Thornton acted as Rule 3 adviser</p>
<p>Puma Brandenburg Limited</p>  <p>Offer by Marble Ltd (Non-Code offer)</p> <p>Grant Thornton acted as financial adviser</p>	<p>Broca plc</p>  <p>Offer by Zergo Group Plc - Scheme of Arrangement</p> <p>Grant Thornton acted as financial adviser</p>	<p>Gladstone plc</p>  <p>Hostile takeover offer by Constellation Software Inc</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>London International Exhibition Centre Holdings plc</p>  <p>Offer by ADNEC</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>Deutsche Post</p>  <p>Offer for Williams Lea</p> <p>Grant Thornton acted as financial adviser</p>
<p>Burns-Anderson plc</p>  <p>Offer by The Money Portal Limited</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>Comland Commercial plc</p>  <p>Offer by MCF Commercial by way of Scheme of arrangement</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>West Bromwich Albion Holdings Ltd</p>  <p>Offer by Jeremy Peace</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>Islamic Bank of Britain plc</p>  <p>Rule 9 waiver from mandatory bid</p> <p>Grant Thornton acted as Rule 3 adviser</p>	<p>Altrix Healthcare plc</p>  <p>Offer by Concateno plc</p> <p>Grant Thornton acted as Rule 3 adviser</p>

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- Salmaan spent two years on an external secondment at the Takeover Panel working on a range of public company takeover transactions with deal values ranging from £5 million to £40 billion
- He has advised on a range of M&A transactions involving different sectors including hostile, unilateral and recommended transactions as well as other City Code related matters
- In addition, Salmaan also advises on a range of corporate matters including AIM and Main Market companies





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