Global Public M&A Guide - Hong Kong

Takeover Tactics

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# 6. Takeover Tactics

[Last updated: 1 January 2025, unless otherwise noted]

**6.1 Stakebuilding**

Generally, a bidder may build its stake in the target company either by acquiring a large stake from a substantial shareholder or by making direct purchases from the stock market, subject to the following restrictions, obligations and requirements.

If and when the bidder possesses any inside information on a listed target, it must not deal in the listed securities (or their derivatives) until the inside information is publicly announced. Otherwise, the bidder will be deemed to have committed insider dealing. For the definition of inside information, please see 3.9 above. However, if the bidder is about to launch a takeover bid, they are not restricted from dealing in the listed securities (or their derivatives) for the sole purpose of the takeover bid. Besides, an off-market transaction in the listed securities (or their derivatives) entered into directly between the bidder and other parties, each of which is in possession of the same inside information, is exempt from the insider dealing prohibitions.

Please see 3.8 above on the disclosure obligations on acquiring a shareholding in a Hong Kong listed target company and the applicable disclosure thresholds.

If the stakebuilding crosses the 30% threshold or the 2% threshold under the creeper rule contained in the Takeovers Code (see 4.1 above), the bidder must make a mandatory general offer to all shareholders to acquire the remaining shares not held by it or its concert parties.

If the bidder is a Hong Kong listed company, it may be subject to the disclosure and/or shareholders’ approval requirements under the Listing Rules, depending on the offer price and the size of the target company compared to that of the bidder.

**6.2 Deal protection methods**

Irrevocable commitments

A bidder may seek irrevocable commitments from shareholders of the target company with significant or controlling stakes to accept the offer or to vote in favor of the resolution approving the scheme of arrangement.

Under the Takeovers Code, a bidder may approach up to six shareholders of the target company to obtain irrevocable commitments in connection with the offer. An offeror does not have to consult the SFC in advance before approaching a shareholder with a material interest (i.e. either alone or in concert with others controlling 5% or more of the voting rights) in the target company. In all other cases, the bidder must first obtain the SFC's consent before making any approach to any shareholder of the target company to obtain such an irrevocable commitment. The SFC would normally impose conditions, including that shareholders may only be approached within a limited period that is pre-agreed with the SFC before an announcement of a firm intention to make an offer is published. The bidder can only reveal to any shareholder who is approached information that is already public (i.e. in a possible offer announcement), and information that is contained in the draft announcement of a firm intention to make an offer where the SFC has indicated it has no substantive comments. If an announcement of a firm intention to make an offer has been issued, there is no restriction on the number of shareholders who may be approached, as long as they only receive public information and the Takeovers Code requirements for meetings between representatives of the offeror and shareholders are met. In all cases, the SFC expects the bidder and its advisers to maintain secrecy before any announcement of an offer. They should make appropriate arrangements and take utmost care to minimize information leakage.

Inducement/break fee
A bidder and the target company may agree an inducement or break fee payable by the target company upon the occurrence of specified events which prevent the offer from proceeding or cause it to fail, e.g., if the target board recommends a higher competing offer.
Under the Takeovers Code, such an inducement or break fee must be of minimal value (normally no more than 1% of the offer value). The target board and its financial adviser must confirm to the SFC in writing that they believe that the fee is in the best interests of shareholders of the target company. Any inducement or break fee arrangement must be fully disclosed in the announcement of a firm intention to make an offer and in the offer document. The SFC should be consulted in all cases where an inducement or break fee, or any similar arrangement, is proposed.

**6.3 Anti-takeover defenses**

Under the Takeovers Code, once a bona fide offer has been communicated to the target board or the target company has reason to believe that a bona fide offer may be imminent, the target board may not take any action to frustrate a proposed offer or deny the shareholders the opportunity to consider it without the shareholders' approval in a general meeting or the bidder’s consent. Without such approval or consent, the target board must not carry out or agree to carry out frustrating actions. Examples of frustating actions include:

issuance of shares;

creation, issuance or granting, or permitting the creation, issuance or granting of, any convertible securities, options or warrants in respect of shares in the target company;

sale, disposal or acquisition of assets of a material amount;

entering into contracts, including service contracts, other than in the ordinary course of business; or

causing the target company or any subsidiary or associated company to purchase or redeem any shares in the target company or provide financial assistance for any such purchase.

As a result, the target board has limited anti-takeover defenses. Possible anti-takeover defenses include:

stating its views against the offer and its recommendation to the shareholders to reject the offer in the target board circular;

approaching other investors and, after consulting the SFC, proposing an inducement fee to solicit a higher competing offer. Please see 6.2 above for requirements in respect of inducement fees under the Takeovers Code; and

seeking approvals from its shareholders to undertake frustrating actions.

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