Global Public M&A Guide - Hong Kong

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*This content was last reviewed around June 2022.*

# Overview

## 1. Overview

[Last updated: 1 June 2022, unless otherwise noted]

The market for the mergers and acquisitions of public companies in Hong Kong has been robust in recent years.

# General Legal Framework

## 2. General Legal Framework

[Last updated: 1 June 2022, unless otherwise noted]

**2.1 Legal framework and key regulatory bodies**

Public takeovers and mergers in Hong Kong are principally regulated by a number of rules and legislation, including:

The Hong Kong Code on Takeovers and Mergers ("**Takeovers Code**"), which applies to takeovers and mergers affecting public companies in Hong Kong and companies and real estate investment trusts with a primary listing in Hong Kong. It sets out the main rules and principles relating to public takeovers and mergers in Hong Kong.

The Takeovers Code does not have the force of law. It is administered by the Executive Director of the Hong Kong Securities and Futures Commission "**SFC**", who may bring disciplinary proceedings for breach of the Takeovers Code before the Takeovers and Mergers Panel ("**Takeovers Panel**"). The Takeovers Panel can impose sanctions (including public censure, public criticism, requiring licensed corporations and financial markets service providers to cease acting for persons in breach, banning advisers from appearing before the SFC or the Takeovers Panel for a stated period of time and requiring compensation to be paid to holders or former holder of securities of listed companies).

The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited(collectively, "**Listing Rules**"), which apply to companies whose securities are listed on the Main Board or GEM, as the case may be, of The Stock Exchange of Hong Kong Limited ("**Stock Exchange**"). The Listing Rules set out the disclosure and approval requirements in respect of transactions undertaken by the listed companies.

The Listing Rules do not have the force of law. They are enforced by the Stock Exchange's imposition of a wide range of sanctions, including private reprimand, public censure, referral to the SFC and other relevant regulatory bodies, exclusion from the market for a stated period and, ultimately, suspension or cancellation of a company's listing (the latter being very rarely applied).

The Companies Ordinance (Chapter 622 of the Laws of Hong Kong), which regulates compulsory acquisitions and schemes of arrangement for companies incorporated in Hong Kong ("**Companies Ordinance**").

The Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) ("**SFO**"), which establishes a statutory disclosure regime whereby listed companies are required to disclose inside information in a timely manner. It also regulates the disclosure of interests in the securities of listed companies, insider dealing and other market misconduct in relation to the listed securities and their derivatives.

**2.2 General principles**

The following general principles are set out in the Takeovers Code to ensure fair treatment for shareholders who are affected by takeover and merger transactions:

all shareholders are to be treated equally and all shareholders of the same class are to be treated similarly;

if control of a company changes, a general offer to all other shareholders is normally required;

during the course of an offer or when an offer is in contemplation, information must be made available to all shareholders, save for the furnishing of information in confidence by the target company to a potential bidder or vice versa;

a bidder should announce an offer after ensuring that it will be able to implement the offer in full;

shareholders should be given sufficient information, advice and time to reach an informed decision on an offer. All documents relating to an offer must be prepared with the highest possible degree of care, responsibility and accuracy;

all parties involved in an offer should make full and prompt disclosure of all relevant information and take precaution to avoid making statements which may mislead shareholders or the market;

rights of control should be exercised in good faith and oppression of minority shareholders is unacceptable;

directors of the bidder company and the target company should have regard to the interests of their shareholders as a whole and not have regard to their personal or family shareholdings or to their personal relationships with the companies;

the target board should not take actions to frustrate a proposed offer or deny the shareholders the opportunity to decide on its merits; and

all parties involved in takeovers and mergers are required to cooperate to the fullest possible extent with the SFC, the Takeovers Panel and the Takeovers Appeal Committee.

**2.3 Foreign investment restrictions**

See 3.4 below.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

[Last updated: 1 June 2022, unless otherwise noted]

**3.1 Shareholding rights and powers**

The table below provides an overview of some of the different rights and powers that are attached to different levels of shareholding in a Hong Kong incorporated listed company:

|  |  |
| --- | --- |
| Shareholding | Rights |
| One share | * The right to attend and vote at general shareholders’ meetings. * The right to receive dividends. * The right to receive a distribution in a liquidation once the creditors have been repaid. * The right to receive a copy of the documentation submitted to general shareholders’ meetings, such as annual audited accounts with the directors’ report and auditor’s report, circulars providing further details on the resolutions to be proposed at the meetings and notices of the meetings. * The right to inspect the company’s registers such as registers of members, directors, company secretaries and debenture holders, its records of resolutions and meetings, and copies of certain management contracts. * The right to file a minority claim against the directors on behalf of the company. |
| 2.5% | * The right to apply to the court for an order allowing the shareholder to inspect the company’s records or documents. * The right to propose resolutions to be dealt with at the general shareholders’ meeting, to put additional items on the agenda of a general shareholders’ meeting and to table draft resolutions for items on the agenda. |
| 5% | * The right to require the directors to call a general shareholders’ meeting, and, upon the directors’ failure to do so, to call the meeting. * The right to apply to the court to cancel an alteration to the objects provision in the articles of association. |
| 10% | * The right to call a general meeting by any two or more shareholders holding 10% of the total voting rights at general meetings, even if the company has no directors. * The right to apply to the court to have a variation of class rights (in the same class as the shareholder) set aside. |
| More than 25% (at a general shareholders’ meeting) | The ability at a general shareholders’ meeting to block resolutions proposed at the general meeting which require a 75% special majority. |
| More than 50% (at a general shareholders’ meeting) | The ability at a general shareholders’ meeting:   * to appoint and remove directors and auditors and to approve the remuneration; * to approve the annual financial statements (including the directors’ report and auditor’s report); * to change the articles in relation to the maximum number of shares the company can issue; * to approve capital increases; * to authorize the provision of financial assistance for the acquisition of the company’s own shares; * to approve certain transactions which require shareholders’ approval under the Takeovers Code, e.g., special deals and frustrating actions, and under the Listing Rules, e.g., certain notifiable transactions and connected transactions and, effective from 3 July 2018, a rights issue that would increase the number of issued shares or the market capitalisation of the company by more than 50%, provided that the shareholder is entitled to vote according to the Takeovers Code and the Listing Rules (as the case may be) (this is applicable to listed companies generally, whether they are incorporated in Hong Kong or not); and * to take decisions for which no special majority of 75% is required. |
| 75% (at a general shareholders’ meeting) | The ability at a general shareholders’ meeting:   * to change the company name, objects and articles; * to authorize a share buyback (not covered by the annual general mandate granted at an annual general meeting of shareholders) or a capital reduction; * to sanction a variation of class rights; * to approve takeover and privatization schemes (subject to the votes cast against them not exceeding 10% of the total voting rights attached to all disinterested shares) and delisting; * effective from 13 July 2018, to approve a whitewash waiver (see 3.5 below) under the Takeovers Code (*Note: Only independent shareholders may vote on the relevant resolution*); * to approve an amalgamation; and * to wind up the company or to declare that the company will become dormant. |
| 90% | The possibility of forcing all other shareholders to sell their shares through a public bid (a "squeeze-out")(see 7.1 below). |

**3.2 Restrictions and careful planning**

The key issues and restrictions associated with the acquisition of a controlling stake in a listed company in Hong Kong are summarized below. Some careful planning is therefore necessary if a bidder or a target company intends to start a process that may lead to a public takeover bid.

Hong Kong laws and regulations contain a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stakebuilding by a bidder, prior due diligence by a bidder and announcements of a potential takeover bid by a bidder or a target company.

**3.3 Due diligence and non-disclosure undertaking**

The Takeovers Code does not contain specific rules on whether or not prior due diligence can be organized or how such due diligence is to be organized. Nevertheless, the concept of prior due diligence or pre- acquisition review by a bidder is generally accepted by the market (and by the SFC and the Stock Exchange as well), and appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These mechanisms include the use of strict confidentiality procedures and data rooms.

The due diligence review typically covers financial, business, legal and operational aspects, whether through the target company’s response to the bidder’s request for provision of information or through information in the public domain obtained by the bidder, or both. The due diligence review should seek to enable the bidder to understand and assess the obligations it will assume, the nature and extent of the target company’s contingent liabilities, title to the target company’s assets, third party consents and regulatory or industry approvals required, the potential growth of the target company and litigations risks.

It is common for the target company, and important from the legal compliance perspective of the target company, to secure, at an early stage, a non-disclosure undertaking from the bidder before providing any non-public information relating to the target company for pre-acquisition review or conducting any further discussions or negotiations of the terms of the public takeover bid. The target company must, however, be mindful not to selectively disclose its inside information to the bidder. For the definition of inside information, please see 3.9 below.

**3.4 Investor rights and restrictions**

Before building a stake in a listed company in Hong Kong, the bidder should, as part of its pre-acquisition due diligence, ascertain if there is any merger control, foreign ownership control or restrictions, or industry specific approval applicable to the industry in which the listed company operates.

Foreign ownership restrictions – There are generally no restrictions on foreign ownership of shares in Hong Kong, except for companies in specific industries, such as broadcasting licensees.

Merger control regime – Mergers involving one or more parties that directly or indirectly own or control a Hong Kong telecommunication carrier licensee are subject to Hong Kong's merger control regime.

Industry specific restrictions – Specific regulated industries, such as banking, insurance, securities, telecommunications and broadcasting industries, are subject to certain ownership and control restrictions and approvals by the regulator of the relevant industry.

**3.5 Methods of acquisition**

The bidder can acquire a controlling stake in a listed company in Hong Kong by:

purchasing existing shares from a shareholder of the company (a "Share Purchase"); or

subscribing for new shares to be issued by the listed target company (a "Share Subscription").

In a Share Purchase, the total number of shares of the listed company will remain unchanged after the bidder’s acquisition and the consideration will go directly to the selling shareholder. If, as a result of the Share Purchase, the bidder (either alone or in concert with others) holds 30% or more of voting shares in the listed company, the bidder is required to make a general offer to all other shareholders in the listed company.

In a Share Subscription, the total number of shares of the listed company will increase and the shareholdings of all existing shareholders in the listed company will be diluted as a result of the bidder’s acquisition. The subscription money will go directly to the listed target company. If, as a result of the Share Subscription, the bidder (either alone or in concert with others) holds 30% or more of voting shares (the "30% threshold") in the listed company, the bidder is required to make a general offer to all other shareholders in the listed company unless the SFC waives the general offer obligation (commonly referred to as the "whitewash waiver"). The bidder can make an application to the SFC for a whitewash waiver, which will be subject to independent shareholders’ approval and compliance with certain regulatory requirements.

**3.6 General considerations**

Funding  
If the bidder will be acquiring a stake which, as a result of the acquisition, will take it (either alone or in concert with others) to the 30% threshold, or which will trigger the creeper rule (as discussed in 4.1 below), the bidder must have committed funding to satisfy its acquisition of the target company shares, as well as all the remaining shares in the offer, at the time of the announcement of its firm intention to make an offer.

Bidder is a listed company  
If the bidder is a listed company, it should comply with any requirement under the listing rules that may be applicable to it, such as reporting, disclosure and/or shareholders’ approval. In the context of the Listing Rules, the application of such requirements will depend on the value of the stake to be acquired and the size of the target company relative to that of the bidder.

**3.7 Insider dealing and market abuse**

Before, during and after a takeover bid, the normal rules regarding insider dealing and market manipulation remain applicable. The rules provide, among other things, that manipulation of the target company's stock and futures price, e.g., by creating misleading rumors, is prohibited. In addition, the insider dealing provisions prevent a bidder that has inside information regarding a target listed company from dealing in securities of the target listed company (other than in relation to launching the actual takeover bid). For the definition of inside information, please see 3.9 below. That being said, stake building for the sole purpose of the takeover bid is an exception to the insider dealing rule (see 6.1 below).

**3.8 Disclosure of shareholdings**

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Under the SFO, if a bidder starts building up a stake in the Hong Kong listed target company, it will be obliged to disclose its stake publicly by submitting a prescribed form electronically through the Disclosure of Interests Online System with the Stock Exchange if the bidder’s interest in the voting shares has passed an applicable disclosure threshold. The key applicable disclosure thresholds for a bidder (who is not a director of the target company) are:

Initial disclosure threshold: 5% interest (including an interest in the underlying shares of equity derivatives).

Subsequent disclosure threshold:

increases or decreases in the interest across a percentage level, e.g., from 5.9% to 6.1%; or

1% short position, and subsequent increases or decreases in the short position across a percentage level.

When determining whether or not a threshold has been passed, a bidder must also take into account the interest (or short position) in voting shares held by (a) such bidder’s spouse and children under the age of 18, (b) related trusts, (c) corporations in which the bidder controls one-third of voting rights or the majority of its board of directors, and (d) parties who are regarded as its "concert parties" for the purposes of the disclosure of interests regime in the SFO, e.g., other parties to an agreement to which it is also a party that contains provisions for the acquisition by any one or more of them of interests in voting shares in the target company and that imposes obligations or restrictions on any one or more of them with respect to the use, retention or disposal of their interests in voting rights in the target company acquired in pursuance of the agreement. The concept of "concert parties" for the purposes of the disclosure of interests regime in the SFO is different from the definition of parties "acting in concert" under the Takeovers Code. Please see 4.1 below for the definition of "acting in concert" under the Takeovers Code.

**3.9 Announcement by the target company**

The target company must continue to comply with the statutory provisions and general rules regarding disclosure and transparency. These include the requirement that a listed company must immediately announce all inside information. The term "inside information" means specific information that is about:

the listed company;

a shareholder or officer of the listed company; or

the listed securities of the listed company or their derivatives; and

is not generally known to persons who are accustomed or would be likely to deal in the listed securities of the listed company but would, if generally known to them, be likely to materially affect the price of the listed securities.

In practice, the question of whether or not a piece of information constitutes "inside information" is determined by the board of directors of the listed company.

The facts surrounding a potential public takeover bid may constitute inside information. If so, the primary obligation for making an announcement rests with the target company once its board has been approached. There are specific circumstances where the board of the target company must make an announcement, for instance, when a firm intention to make an offer is notified to the target company’s board, or when the target company is the subject of rumor or speculation about a possible offer or there is undue movement in its share price or share turnover volume.

**3.10 Launch of a public takeover bid**

No one is permitted to announce the launch of a public takeover bid until the announcement has been approved by the SFC. This prohibition not only applies to a bidder, but also to the target company (even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.9 above).

Before the board of the target company is approached, the responsibility of making an announcement normally rests with the bidder. A bidder that intends to announce a public takeover bid must first inform the SFC of its intention and obtain the SFC’s permission to make the announcement. If there are rumors or leaks that a bidder intends to launch a public takeover bid, the bidder must make an announcement.

**3.11 Acting in concert**

The majority of questions concerning interpretation of the Takeovers Code arise in relation to the concept of persons "acting in concert". For the definition of "acting in concert", please see 4.1 below.

# Effecting a Takeover

## 4. Effecting a Takeover

[Last updated: 1 June 2022, unless otherwise noted]

There are two common forms of takeover bids in Hong Kong:

mandatory general offer; and

voluntary general offer.

In Hong Kong, most public takeover bids are friendly rather than hostile because many public companies in Hong Kong are either family-controlled or owned by shareholders with significant or controlling stakes.

**4.1 Mandatory general offer**

Definition of "control" and trigger points for a mandatory general offer

Under the Takeovers Code, "control" is deemed to mean a holding, or aggregate holdings, of 30% or more of the voting rights of a company.

A mandatory general offer to all shareholders of the target company must be made where:

a bidder acquires shares which, when taken together with the shares already held by the bidder (alone or in concert with others), represent 30% or more of the voting rights of the target company; or

a bidder holding not less than 30% and not more than 50% of the voting rights of the target company acquires (either alone or in concert with others), in any period of 12 months, additional shares carrying more than 2% of the voting rights of the target company. This is commonly known as the "creeper rule".

Concept of "acting in concert"

For the purposes of the Takeovers Code, a person "acts in concert" with the bidder if, pursuant to an agreement or understanding (whether formal or informal), they actively cooperate, through the acquisition of voting rights by either of them, to obtain or consolidate control of the target company. Under the Takeovers Code, the definition of "acting in concert" is drafted in broad terms so that it may apply in a broad range of situations, but it does set out nine classes of persons who are presumed to be acting in concert unless the contrary is established. Evidence that parties are "acting in concert" may be direct or, more likely, may be inferred from circumstantial evidence where no single circumstance will necessarily be determinative.

Offer price of a mandatory general offer

A mandatory general offer must be made in cash or be accompanied by a cash alternative at not less than the highest price paid by the bidder (either alone or in concert with others) for shares of that class during the offer period and within six months before the commencement of the offer period. If the voting rights were acquired for a consideration other than cash, the offer price must be determined by an independent valuation.

If, after an announcement of a firm intention to make an offer and during the offer period, the bidder (either alone or in concert with others) purchases shares of the target company at a price that is above the offer price, the bidder must increase the offer price to the highest price paid for such shares.

Proof of funding requirement

Both the announcement of a firm intention to make an offer and the offer document itself must include a confirmation from the bidder's financial adviser that sufficient resources are available to the bidder to satisfy full acceptance of the offer.

In addition, the bidder's financial adviser must provide written confirmation to the SFC that it is satisfied that there are sufficient resources available to satisfy the bidder's obligations in respect of the offer.

Conditions to a mandatory general offer

Except with the consent of the SFC, all general offers must be conditional upon the bidder having received acceptances which will result in the bidder (either alone or in concert with others) holding more than 50% of the voting rights of the target company. This is commonly referred to as the "acceptance condition".

Where the bidder holds more than 50% of the voting rights before the offer is made, an offer must normally be unconditional.

Listing status of the target company

If the bidder intends to maintain the listing status of the target company, the bidder should observe the public float requirement of the Listing Rules. This requires that at least 25% (or a lower percentage agreed by the Stock Exchange on initial listing) of the target company's securities must be in public hands.

**4.2 Voluntary general offer**

A voluntary general offer is an offer that a bidder voluntarily makes for all the shares of the target company. Any bidder may make a voluntary general offer provided that, during the course of a voluntary offer, it does not make any acquisition of voting rights in the target which triggers a mandatory general offer as discussed in 4.1 above.

Offer price of a voluntary general offer

The offer price may be paid in cash, securities or a combination of the two.

However, if the bidder (either alone or in concert with others) has acquired shares in cash in the target company carrying 10% or more of the voting rights during the offer period and within six months before the commencement of the offer period, the offer price must be paid in cash, or accompanied by a cash alternative, at not less than the highest price paid for such shares. The SFC also has the discretion to require cash to be made available even where less than 10% has been purchased for cash in the six months before the commencement of the offer period if the vendors are directors or other persons closely connected with the bidder or the target company.

On the other hand, if the bidder (either alone or in concert with others) has acquired shares in the target company carrying 10% or more of the voting rights in exchange for securities during the offer period and within three months before the commencement of the offer period, such securities are required to be offered to all other holders of shares of that class. Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer price has been posted to accepting shareholders, the bidder will also be required to make an offer in cash or to provide a cash alternative. In the case of a purchase in exchange for securities from directors or persons closely connected with the bidder or the target company, the SFC may require a securities offer on the same basis even where less than 10% has been purchased or where the purchase was made more than three months before the start of the offer period.

The offer price may not be at a discount of more than 50% to the market price of the shares of the target company (being the lesser of the closing price of the shares on the day before the announcement of a firm intention to make an offer under the Takeovers Code and the five-day average closing price prior to such day).

If, after an announcement of a firm intention to make an offer and during the offer period, the bidder (either alone or in concert with others) purchases shares of the target company at a price that is above the offer price, the bidder must increase the offer price to the highest price paid for such shares.

Proof of funding requirement

Where the offer consists of cash or any other assets except new securities to be issued by the bidder, both the announcement of a firm intention to make an offer and the offer document itself must include confirmation from the bidder's financial adviser that sufficient resources are available to the bidder to satisfy full acceptance of the offer.

In addition, the bidder's financial adviser must provide written confirmation to the SFC that it is satisfied that there are sufficient resources available to satisfy the bidder's obligations in respect of the offer.

Conditions to a voluntary general offer

A voluntary general offer may be made subject to any conditions except those which depend on the bidder's own judgment or the fulfilment of which is in its control or at its discretion.

Except with the consent of the SFC, all general offers must be conditional upon the bidder having received acceptances which will result in the bidder (either alone or in concert with others) holding more than 50% of the voting rights of the target company. A voluntary general offer may be made conditional upon an acceptance level of shares carrying a higher percentage of the voting rights, failing which the bidder is entitled to withdraw the offer.

However, when setting the acceptance level, if the bidder intends to maintain the listing status of the target company, the bidder should observe the public float requirement of the Listing Rules, which requires that at least 25% (or a lower percentage agreed by the Stock Exchange on initial listing) of the target company's securities must be in public hands.

# Timeline

## 5. Timeline

[Last updated: 1 June 2022, unless otherwise noted]

**5.1 Disclosure of shareholdings**

As a general rule, the timeline for a mandatory general offer is similar to the timeline of a voluntary general offer, with certain exceptions. The table below contains a timeline of a typical mandatory general offer.

|  |
| --- |
| Step |
| 1. Preparatory stage:   * Preparation of the bid by the bidder (feasibility study, due diligence and financing). * The bidder approaches the target and/or its key shareholders. * Negotiations with the target and/or its key shareholders. |
| 2. Announcement:   * The bidder makes an announcement of a firm intention to make an offer, setting out the terms of the offer and other details required under the Takeovers Code. Once such announcement is made, the bidder can no longer withdraw the bid (except with the consent of the SFC and in certain limited circumstances, such as in the event of a competing offer). * Before an announcement of a firm intention to make an offer is made, there may be circumstances where the bidder/potential bidder, the target company or the potential vendor must make an announcement of a possible offer when, for example:   the target company is the subject of rumor or speculation about a possible offer;  there is undue movement in the target company’s share price or volume of share turnover; or  negotiations or discussions are about to be extended to include more than a very restricted number of people. |
| 3. Day 0:   * Posting of an offer document or a composite document (combining the offer document and the target board circular):   within 21 days of the date of announcement of the terms of the offer (for cash offer); or  within 35 days of the date of the announcement of the terms of the offer (for securities exchange offer). |
| 4. Day 14:   * Last day for posting of the target board circular if it is not combined in a composite document (or not posted on the same day as the offer document on Day 0). |
| 5. Day 21:   * First permitted closing date if the target board circular is combined in a composite document (or posted on the same day as the offer document). |
| 6. Day 28:   * First permitted closing date if the target board circular is not combined in a composite document (or posted after the date on which the offer document is posted). |
| 7. Day 39:   * Last day for the target company to announce new material information (including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments or for any material acquisition, disposal or major transactions). |
| 8. Day 46:   * Last day for revision of the offer if the offer has not by then become unconditional as to acceptances. |
| 9. Day 60:   * Last day for the offer to become or be declared unconditional as to acceptances and such day cannot be extended (except with the consent of the SFC and in certain limited circumstances, such as in the event of a competing offer). * Last day for accepting shareholders to withdraw their acceptance. |
| 10. Day 81:   * Last day for all conditions to the offer to be fulfilled or the offer must lapse. |
| 11. Payment of offer price:   * The bidder must pay the offer price to accepting shareholders within seven business days of the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance. |

**5.2 Competing bid**

If a competing offer has been announced, both bidders will normally be bound by the timetable established by the posting of the competing offer document. If a competitive situation continues to exist in the later stages of the offer period, the SFC will normally require revised offers to be published in accordance with an auction procedure, the terms of which will be determined by the SFC. That procedure will normally require final revisions to competing offers to be announced by the 46th day following the posting of the competing offer document, but will enable a bidder to revise its offer within a set period in response to any revision announced by a competing bidder on or after the 46th day. The SFC will consider applying any alternative procedure which is agreed between competing bidders and the target board.

Set out below is an overview of the main steps for a mandatory general offer in Hong Kong.

**5.3 Indicative timeline for a mandatory general offer**

Click here to view diagram for [Hong Kong](https://resourcehub.bakermckenzie.com/en/-/media/global-public-ma-handbook/files/2022-version/timeline_hong_kong_2022.pdf?sc_lang=en)

# Takeover Tactics

## 6. Takeover Tactics

[Last updated: 1 June 2022, 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 sophisticated investors who have a controlling stake in the target company to obtain an irrevocable commitment in connection with the offer. 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 or (where such approach is being made prior to the announcement of a firm intention to make an offer) information that will be set out in the announcement of a firm intention to make an offer. If an announcement of an offer or possible offer has been issued, there is normally no restriction on the number of shareholders who may be approached, as long as they are not provided with any non-public information. In case of a recommended offer, the SFC may adopt a more relaxed approach on the number of shareholders who may be approached. The bidder must show the steps being taken to prevent information being leaked, e.g., by obtaining signed confidentiality undertakings from the shareholders being approached.

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 a waiver granted by the SFC. In particular, the target board must not do or agree to do the following, unless consent from the SFC and its shareholders is obtained:

issue any shares;

create, issue or grant, or permit the creation, issuance or granting of, any convertible securities, options or warrants in respect of shares in the target company;

sell, dispose of or acquire assets of a material amount;

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

cause 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 and the SFC to undertake frustrating actions.

# Squeeze-out of Minority Shareholders after Completion of the Takeover

## 7. Squeeze-out of Minority Shareholders after Completion of the Takeover

[Last updated: 1 June 2022, unless otherwise noted]

**7.1 Squeeze-out**

If, within four months following a takeover offer, the bidder (either alone or in concert with others) holds 90% in number of the shares to which the takeover offer relates in the Hong Kong incorporated target company (the "90% threshold"), the bidder can give a squeeze-out notice to compel shareholders who have not accepted the takeover offer to sell the remaining shares to the bidder. A shareholder can, however, apply to the court for an order stating that the bidder is not entitled to acquire the shares or for an order varying the terms of the acquisition. Absent such an application, the bidder is bound to acquire the remaining shares after giving the squeeze-out notice.

**7.2 Sell-out**

If, following a takeover offer, the bidder (either alone or in concert with others) holds shares in the Hong Kong incorporated target company that reaches the 90% threshold, a shareholder who has not accepted the takeover offer may, by a letter addressed to the bidder, require the bidder to acquire its shares. Where the minority shareholder exercises its right to be bought out, the bidder is bound to acquire the remaining shares

**7.3 Restrictions on acquiring securities after the takeover bid period**

If an offer is withdrawn or lapses before it becomes unconditional, the bidder is restricted, for a period of 12 months, from launching a new offer or acquiring shares that trigger a mandatory general offer. In addition, where a privatization offer has been unsuccessful, the bidder will normally be precluded from buying any shares in the target company within 12 months after the offer lapses if the result would be a delisting of the target company’s shares on the Stock Exchange (unless previously approved by shareholders in accordance with the Listing Rules).

# Delisting

## 8. Delisting

[Last updated: 1 June 2022, unless otherwise noted]

**8.1 Methods**

The methods that can be used to delist and take a public company private in Hong Kong (commonly referred to as "privatization") are:

scheme of arrangement;

general offer plus compulsory acquisition, i.e., squeeze-out (see 7.1 above);

general offer plus shareholders’ approval for delisting; and

capital reorganization plus shareholders’ approval for delisting.

A scheme of arrangement is a court sanctioned arrangement with shareholders to cancel or transfer to a bidder all the shares in the target company. The court may sanction and permit the scheme of a Hong Kong incorporated listed company if a 75% majority of the voting rights of the shareholders present and voting at the court-directed shareholders' meeting vote in favor of the scheme at the meeting (and not more than 10% of the total voting rights of all "disinterested shares" vote against the scheme at the meeting). If the listed company concerned is not a Hong Kong incorporated company, the local laws may also require the scheme to be approved by a majority in number of the shareholders voting at the shareholders' meeting (commonly referred to as the "headcount test").

In addition to satisfying the voting requirements imposed by law, the Takeovers Code requires that (a) 75% or more of the votes attaching to the "disinterested shares" cast at a duly convened meeting of the holders of the "disinterested shares" agree to the scheme; and (b) the number of votes cast against the scheme at such meeting is not more than 10% of the votes attaching to all "disinterested shares". The concept of "disinterested shares" for the purposes of the Takeovers Code is different from the definition of "disinterested shares" under the Companies Ordinance. Under the Takeovers Code, the term “disinterested shares” is defined to mean shares in the target company other than those which are owned by the bidder or persons acting in concert with it.

As a scheme of arrangement is implemented by the target company, it is not appropriate for hostile bids.

The scheme of arrangement is the most commonly seen privatization method in Hong Kong. Some reasons for this are the "all-or-nothing" nature of a scheme and the Hong Kong stamp duty savings that may ensue from a scheme involving the cancellation of shares in the target company.

**8.2 Delisting**

In Hong Kong, following a successful privatization through a scheme of arrangement or a squeeze-out, a Hong Kong listed company can voluntarily withdraw its listing on the Stock Exchange.

A Hong Kong listed company can also voluntarily withdraw its listing on the Stock Exchange following a general offer, a capital reorganization or in other specific circumstances. Such voluntary withdrawal will be subject to shareholders’ approval and other regulatory requirements, depending on whether or not the listed company has an alternative listing.

A listed company must give its shareholders notice of the proposed withdrawal of listing by way of an announcement, and the intention not to retain the listing must be stated in a circular to the shareholders.

**8.3 Take-private transactions**

You may also refer to Baker McKenzie's [Global Guide to Take-Private Transactions](https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWHb%2FPDBPVvgoynF5xh3j3s&amp;nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&amp;attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAeuDFUqE5GaTc%3D&amp;fromContentView=1), which covers some of the noteworthy features and requirements applicable to take-private transactions.

# Private investment in public equity - PIPE

## PIPE

[Last updated: 1 June 2022, unless otherwise noted]

Please refer to Baker McKenzie's [Global PIPE Guide](https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAVSwlzHifk1Y4A4d%2BBG8qtI&amp;nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&amp;attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAevPtp6Dbiv5k%3D&amp;fromContentView=1) for the features and requirements applicable to PIPE transactions.

# Contacts

## 9. Contacts within Baker McKenzie

Dorothea Koo, Christina Lee, Victoria Lloyd and Lawrence Lee in the Hong Kong office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Hong Kong.

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