BUYING AN AUSTRALIAN PUBLIC COMPANY GUIDE

2023

INTRODUCTION

This guide sets out at a high level some of the key legal issues involved in buying a stake in a listed Australian public company. The most common ways of acquiring an interest in more than 20% of the voting securities in a listed Australian public company are:

+ a takeover bid, either off-market or on-market;
+ a Court approved scheme of arrangement.

Gilbert + Tobin's corporate team works on Australia's most complicated mergers and acquisitions, at all levels of the market and is consistently recognised as leading the field.

This guide is intended as a general overview and is not designed to comprehensively deal with the law relating to buying a listed Australian public company. It should not be relied on in place of detailed legal advice about any specific transaction.

If you would like more information on these or other Australian legal issues, we would be pleased to assist.

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ACCC means Australian Competition and Consumer Commission

ASIC means the Australian Securities and Investments Commission

ASX means the Australian Securities Exchange

CCA means Competition and Consumer Act 2010 (Cth)

Corporations Act means Corporations Act 2001 (Cth)

FATA means the Foreign Acquisitions and Takeovers Act 1975 (Cth)

FIRB means the Foreign Investment Review Board

Listing Rules means ASX Listing Rules

MAC means Material Adverse Change

MIS means Managed Investment Scheme

1. DISCLOSURE

One of the first decisions facing a bidder is the appropriate level of disclosure during a takeover process.

Statements by the bidder may be used as a tactical device, however the content of these statements is carefully monitored by the regulatory bodies to ensure that the market is not misled.

APPROACH

+ A target may choose to disclose an approach, but is not required to do so where the proposal is confidential, non-binding and incomplete.
+ Tactical advantages may be gained if a transaction is announced shortly after the release of results by the target (thereby limiting the target's range of responses), or at a time when the target will have difficulty in responding.
+ Under the Listing Rules, announcement of a takeover bid also prevents a target from making a placement of shares for three months without shareholder approval.
+ A bidder will be held to a public statement of an intention to make a takeover bid.

TRUTH IN TAKEOVERS

+ Statements made in the course of a takeover must not be misleading or deceptive.
+ Sometimes a bidder may use a takeover bid to test market reaction, with the intention of later increasing the offer price. Any statement indicating that the price is "final or best" or that "the offer period will not be extended" may be considered to be misleading, if the price is subsequently varied or the offer period extended.

LEAKS

+ Have draft announcements prepared in case confidential negotiations leak.
+ A company relying on the "confidential and incomplete" carve out has a positive obligation to monitor (and mandate their financial adviser to monitor) press and Reuters feeds for leaks.

COMMUNICATIONS

+ A well thought out communication plan is an important ingredient to a successful transaction. This can involve press liaison, Q&A scripts, helplines and briefings.
+ It is important to avoid selective disclosure.
+ A target company will need to co-ordinate with its registry.

2. THE 20% RULE

Some important percentage thresholds relating to interests in shares.

RELEVANT INTEREST	POTENTIAL THRESHOLD
Below 5%	ASIC, public companies and responsible entities can trace beneficial ownership in shares or units, even where voting power is below the 5% level.
5% or more	Substantial holding level (this is the voting power level, being the relevant interests of you and your associates) which requires the holder to give information to a company, responsible entity and ASX. Notice must also be given of any increase or decrease in voting power of 1% or more since the last notice given, or if the holder ceases to have a substantial shareholding. A foreign person is required to obtain FIRB approval to acquire an interest in 5% or more in the securities of an entity that carries on an Australian media business (irrespective of value of target or the value of the interest).
10% or more	A foreign government investor (being, in broad terms, a foreign government, an agency or instrumentality of a foreign government or a corporation, trustee of a trust or general partner of a limited partnership in which foreign government investors from one country hold 20% or more of the interests or foreign government investors from multiple countries holds 40% or more of the interests) is required to obtain FIRB approval to acquire an interest in 10% or more (and in some cases less than 10%) in the shares of an Australian company or the units in an Australian unit trust. A foreign person is required to obtain FIRB approval to acquire an interest in 10% or more (and in some cases less than 10%) in the shares or units of an Australian agribusiness, where the value of the investment (and other investments held by the foreign person and its associates in that target) exceed the relevant threshold. The relevant threshold differs depending on the identity of the acquirer. A foreign person is required to obtain FIRB approval for any acquisition of 10% or more (and in some cases less than 10%) in an Australian land corporation listed in Australia or overseas, where the value of the interest exceeds the relevant threshold. The relevant threshold differs depending on the identity of the acquirer and the nature of the land held by the Australian land corporation.
Over 10%	Holder can block compulsory acquisition, which requires voting power of 90% to be held by the bidder and its associates.
20%	The Corporations Act generally prohibits a person acquiring a relevant interest in more than 20% of voting shares (including those shares held by associates) (see page 7), unless the acquisition occurs via a specified exception (such as a takeover bid, scheme of arrangement or with target shareholder approval). A foreign person is required to obtain FIRB approval for any acquisition of 20% or more of the shares in an Australian company or units in an Australian unit trust, where the gross assets of the target are, or the consideration paid implies a value for the target, in excess of the relevant threshold. The relevant threshold differs depending on the identity of the acquirer.
Over 25%	Holder can block special resolutions, which require the support of 75% of votes cast.
50%	Voting control of the company (the ability to pass ordinary resolutions) and the ability, subject to the company's constitution, to control composition of the Board (in practice, this may be obtained at a lower threshold, depending on actual voting patterns).
75%	Holder can ensure special resolutions are passed.
90%	In general, confers the ability to compulsorily acquire remaining securities in the target.

20%

A target may choose to disclose an approach, but is not required to do so where the proposal is confidential, non-binding and incomplete.

Tactical advantages may be gained if a transaction is announced shortly after the release of results by the target (thereby limiting the target's range of responses), or at a time when the target will have difficulty in responding.

Under the Listing Rules, announcement of a takeover bid also prevents a target from making a placement of shares for three months without shareholder approval.

A bidder will be held to a public statement of an intention to make a takeover bid.

RELEVANT INTEREST

VOTING POWER

A person's voting power in a company includes votes attached to shares in which it or its associates have a relevant interest.

ASSOCIATES

An associate is a related body corporate, a person who acts in concert (that is, with a common purpose not independently formed) or who has or proposes to enter into any agreement, arrangement or understanding for the purpose of controlling the composition of the Board or the conduct of the company's affairs.

Section 606 of the Corporations Act prohibits the acquisition of a relevant interest in issued voting shares in a public company if, as a result:

+ any person's voting power increases to more than 20%; or
+ any person's voting power would increase within the 20%–90% band, and the acquisition has not been made pursuant to an exception to the rule.

Key exceptions to the 20% rule are:

+ an on-market or off-market takeover bid (also referred to as a "takeover offer");
+ acquisitions resulting from a members' scheme of arrangement approved by a Court (also referred to as a "scheme");
+ "creeping" acquisitions of not more than 3% every six months; and
+ acquisitions approved by a shareholders' resolution.

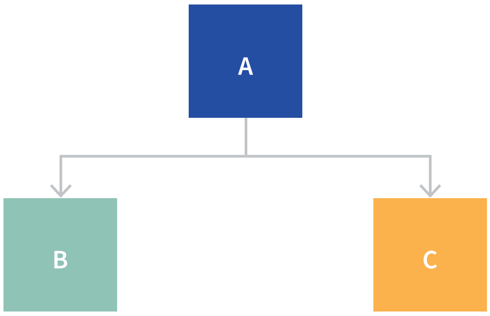
This guide focuses on the first two exceptions, as these will be the main mechanisms for achieving 100% ownership of a listed Australian public company.

WHAT HAPPENS IF I BREACH THE 20% RULE?

Breaching the 20% rule can result in a range of Court-imposed orders, including fines, jail for up to six months, or both. However this requires lengthy Court proceedings and in practice, for listed companies subject to day-to-day market movements, the more likely consequence is that ASIC or other interested parties (eg another shareholder, a competing bidder or the company itself) will seek orders from the Takeovers Panel, which can deal with these matters quicker than a Court. This can then result in the Takeovers Panel making a declaration of unacceptable circumstances (see section 7.11) and orders, typically either requiring divestment of the illegally acquired shares or restraining the voting of those shares.

3. PRELIMINARY CONSIDERATIONS

3.1 CERTAINTY OF FUNDING



A From the announcement of a takeover bid (which may be up to two months prior to the lodgement of the bidder's statement), a bidder must have arrangements in place to satisfy full acceptance of its offers. The relevant arrangements need not be formally documented, and can be subject to conditions precedent, so long as there is a binding commitment.

B A financier of a takeover bid should understand the nature of the takeover conditions, particularly any 90% minimum acceptance condition.

C Debt terms, such as a make whole premium, when combined with a share stake, may be characterised as "lockup" devices (see below) and be objectionable on that basis.

3.2 NON-DISCLOSURE AGREEMENT

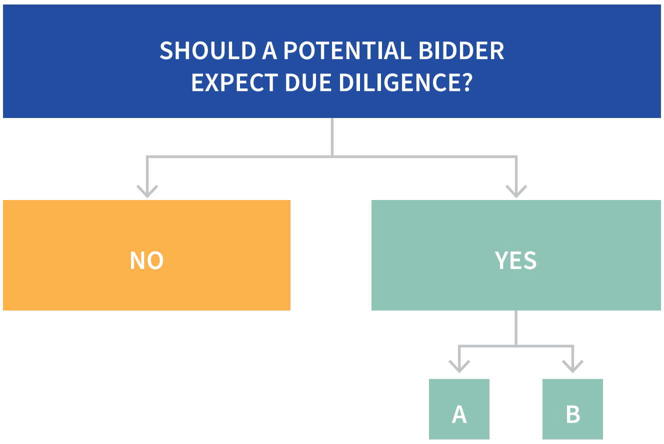
When an approach is made, it is common for the parties to enter into a non-disclosure agreement, particularly where due diligence is permitted.

COMMON CLAUSE	CONSIDERATIONS
Mutuality	Consider if information will flow both ways, including information concerning discussions.
Exclusions	Information must be disclosed where required by the Listing Rules.
Standstill	Consider standstill restrictions impact on strategy and possible pre-bid stake.

EXCLUSIVITY CLAUSE	CONSIDERATIONS
Restrictions	Restrictions on use of target company information and non-poaching provisions typical if the parties are competitors.
Exclusivity	Break fees, no-shop and no-talk arrangements may appear here or be deferred until negotiation of the terms of an Implementation Agreement.
Break Fee	Under current market practice and Takeover Panel guidance, a break fee of up to 1% of takeover value is acceptable (sometimes in exchange for exclusivity or due diligence rights). Mutual break fees are becoming more common and the 1% guidance applies only with respect to the target.
No Shop	The target agrees not to solicit rival offers, usually during some defined period of exclusivity.
No Talk	The target agrees not to negotiate with any rival bidder even if that rival's approach is unsolicited. A fiduciary carve out is required (directors may consider any better proposal if they form the view that to do so would be in the best interests of the target's shareholders).
Notification and matching rights	A potential bidder may negotiate to be notified of any approach or potentially competing proposal, and obtain a matching right.

3.3 DUE DILIGENCE

When an approach is made, it is common for the parties to enter into a non-disclosure agreement, particularly where due diligence is permitted.



NO In a hostile transaction a potential bidder will not usually be granted due diligence. There will still be a lot of information on an ASX-listed target publicly available. This includes their ASX continuous disclosure filings, annual report and financial statements. It is also possible to conduct searches of Court lists and other public registers.

YES Often a target company will permit a potential friendly bidder to carry out due diligence on a limited range of documents.

(A) Disclosure of due diligence: Since a bidder's statement in a takeover must contain all information that is known to the bidder and is relevant, any information that the bidder discovers in its due diligence on the target company may be disclosed.

(B) Risk of due diligence: A potential bidder may obtain inside information (that is, information which is price sensitive and not generally available) as a result of conducting due diligence. Often this occurs where a target is withholding information from disclosure based on carve outs contained in the Listing Rules for incomplete and confidential information, or internal management documentation.

A potential bidder will be prohibited from acquiring shares in the target or entering into agreements to acquire shares until the inside information becomes generally available (eg through disclosure in its bidder's statement or a "cleansing" disclosure by the target). A potential bidder should consider the scope and timing of its due diligence investigations carefully in light of any pre-bid acquisition of target shares.

3.4 PRICING

A bidder may offer cash, scrip or a combination of cash and scrip as consideration for the offer.

In a takeover bid, the consideration offered must equal or exceed the maximum consideration that the bidder or any of its associates provided, or agreed to provide, for takeover class securities during the four months prior to the date of the takeover.

3.5 ACCOUNTING AND TAX

The tax position of both the bidder and shareholders of the target should be considered before announcing a transaction.

The accounting treatment of the acquisition in the bidder's accounts should also be closely examined, particularly issues relating to amortisation of goodwill.

3.6 FIRB

If the bidder is foreign in accordance with FATA, the acquisition may need to be approved by the Australian Treasurer or his delegated decision-maker.

3.7 ACCC MERGER CLEARANCE

Section 50 of the CCA prohibits mergers, or more generally, the acquisition of shares or assets, where the merger or acquisition will have the effect or likely effect of substantially lessening competition in any market in Australia. The ACCC is charged with enforcing section 50.

There is no statutory requirement to notify the ACCC of a merger or acquisition, and also no procedural prohibition on completing a transaction without notifying the ACCC. However, the ACCC encourages parties to notify a transaction if the products of merger parties are substitutes or complements, and the merged firm will have a combined market share of more than 20% in the relevant market. The ACCC also expects to be notified of transactions taking place in highly concentrated industries and industries which it has a particular interest in (eg telecommunications/media, grocery, fuel, energy). The ACCC has a well-established informal clearance process pursuant to which parties can informally approach the ACCC in relation to transactions, including on a confidential basis. If a transaction proceeds without notification, the ACCC may still commence a post-completion review and take action to prevent or unwind the transaction, or to require divestiture post-completion.

4. PRE-BID STAKE

4.1 CERTAINTY OF FUNDING

Before launching a takeover bid or initiating a members' scheme of arrangement, a bidder may wish to acquire a pre-bid stake. This may enable an acquisition at lower prices and may deter potential competitors from launching rival takeover bids. A pre-bid stake will also give the bidder standing to challenge the action of the target's directors if necessary. It may also offer some monetary "insurance" for costs if a bidder is overbid. However, there is a risk in a scheme transaction that "friendly" votes may be "coming off the table" if already controlled by the bidder.

As a practical consequence of these factors, potential bidders seeking to acquire a pre-bid stake discreetly will often either:

+ acquire up to 4.9% of voting shares gradually, then increase their stake up to 20% in one day of trading; or
+ acquire up to 20% in one day of trading.

4.2 SHAREHOLDER INTENTION STATEMENTS

A bidder may wish to secure voting or acceptance intention statements from some of the target's shareholders. Approaching target shareholders involves a degree of legal risk and needs to be managed carefully, and specific advice should be sought in advance.

ISSUE	CONSIDERATIONS
Disclosure	A bidder must give a substantial shareholding notice to the company and ASX within two business days after it becomes aware that it has a substantial shareholding (sooner if a takeover bid has been made for the company). Copies of documents relevant to acquisitions of and changes in substantial shareholdings (eg share sale agreements) must be included with the notice(s), as well as details of any agreement or arrangement giving rise to an association.
Shares to be acquired	A bidder is prohibited from offering or agreeing to give a benefit to a person during the offer period, which is likely to induce acceptance of the takeover bid or disposal of shares, unless that benefit is offered to all shareholders. These restrictions do not apply in the context of a scheme of arrangement, however offering a shareholder an additional benefit or different consideration may cause that shareholder to be in a separate class for the purpose of the scheme meetings.

METHOD	CONSIDERATIONS
Escalation agreements	An escalation agreement is where a bidder pays a set price on acquiring target company shares from a shareholder and agrees to pay a further amount later if during an agreed period, the bidder purchases other shares in the target at a higher price. Escalation clauses are prohibited where the later payment is determined by reference, partly or wholly, to the bid consideration under a takeover.
Pre-bid option agreement	Shareholder gives the bidder an option to require it to sell its shares at a price, conditional upon the bidder making a takeover bid at or above that price within a certain time. The terms of the option would usually permit the shareholder to sell into the takeover, and thus obtain any increased offer price.
Pre-bid acceptance agreement	An undertaking from a shareholder to accept the takeover bid on the condition that it is announced within a certain timeframe (not an obligation to sell shares at a determined price). The shareholder receives the benefit of any subsequent variations to the takeover bid, particularly any increase in price.
Swap arrangements	It may be possible for a bidder to enter into cash settled equity swaps with a counterparty. The counterparty itself may acquire target shares to provide a hedge against their exposure under the swap. The terms should be considered carefully so as to manage any risk of obtaining a relevant interest in underlying securities, issues of association with the counterparty and potential disclosure (note Takeover Panel guidance concerning disclosure in the context of a control transaction where the arrangement is over 5% or more of the target's shares).

In the case of foreign-controlled bidders, the pre-bid stake will usually be limited to under 20% due to foreign ownership restrictions (under 10% where the bidder qualifies as a foreign government investor).

5. TAKEOVER BIDS – OVERVIEW

5.1 INTRODUCTION

A takeover bid is essentially an offer to all members of a target company to purchase their shares in the target for specified consideration.

A takeover bid can be "friendly" or hostile and can generally take anything between three to six months (although it can be delayed if contested or hostile), followed by a further one to two month period to complete compulsory acquisition of any outstanding shares.

Two kinds of takeover bids are permitted in Australia:

+ an off-market bid for either quoted or unquoted securities; and
+ an on-market bid which is available only for quoted securities, and cannot be subject to conditions.

As on-market takeover bids are comparatively rare, this guide is largely confined to off-market takeover bids.

Once a bidder announces its intention to make a takeover bid, offers under the bid must be dispatched within two months of the announcement.

This guide assumes that in any control transaction, 100% of the target securities are acquired. In some takeovers, a bid may be made in relation to a proportion of the target securities (see section 5.3) or 100% of the target securities may not be obtained and a minority shareholding will subsist.

In such circumstances, while control (ie over 50%) is generally obtained, there will be limits imposed on what a bidder may do in terms of the operation of the target company. Directors of a target company, in such a situation of majority control but not absolute control, will need to have regard to the best interests of all shareholders.

ASPECTS OF TAKEOVER BID	OFF-MARKET TAKEOVER BID	ON-MARKET TAKEOVER BID
Takeover bid conditions	Wide variety of takeover bid conditions available (see section 7.1)	Takeover bid must be unconditional
Shares to be acquired	Only restriction is no maximum (refer to proportional takeover bids in section 5.3)	Only available for quoted securities of a listed public company
Consideration	May comprise cash or securities or both	Cash consideration only
Partial takeover bids	Proportional takeover bid available	Only full takeover bid available
On-market/ off-market buying	On-market buying only permitted if takeover bid is unconditional or only subject to prescribed occurrences condition	Restricted to on-market buying
Latest time for price increase or extension	If conditional, up to one week before close, otherwise to close	Five trading days prior to close unless there is a higher offer
Increases to takeover bid consideration	Operates retrospectively, entitling shareholders who have already accepted to get the higher price	Not retrospective – earlier sellers will not be entitled to the higher price
Waiver of conditions	Must be made at least seven days before expiry of offer period	Not relevant as must be unconditional
Brokerage fees	Shareholders accept off-market and therefore do not pay brokerage fees	Accepting shareholders pay brokerage fees as in an ordinary sale
Payment	Earlier of 21 days after close or 30 days after acceptance or after the takeover bid becomes unconditional	Normal market settlement applies (currently two business days)

5.2 OFF-MARKET TAKEOVER BIDS

The off-market takeover bid is essentially an offer to all members of a target company to purchase their shares in the target for specified consideration.

Separate offers are required under an off-market takeover bid for separate classes of shares or options.

Each takeover bid must be accompanied by a bidder's statement and an acceptance form.

The bidder's statement must contain information designed to enable the target shareholder to assess whether or not to accept the offer, including:

+ the bidder's identity and recent dealings by the bidder and associates of the bidder in the target's shares;
+ details of the consideration offered for the shares and the bidder's arrangements for financing the acquisition;
+ the bidder's intentions concerning the on-going business of the target company;
+ any other material information known to the bidder which is relevant to a shareholder's decision whether or not to accept the offer; and
+ where the consideration for an offer includes shares or other securities, a bidder is required to include in the bidder's statement very detailed information, effectively the same as in a prospectus. However, where the securities being offered are of a class which have been continuously listed on ASX for the period of 12 months preceding the offer, the information required is less detailed.

5.3 PROPORTIONAL TAKEOVER BIDS

Offers can be made to acquire only part of the target shares, but such an offer must be made for a specified proportion of each member's shares. Such offers are rare. Pro-rata partial takeovers, namely offers to acquire a specified percentage of the target's shares, with over-acceptances pro-rated, are prohibited in Australia.

It is common for the constitution of a listed company to require that shareholder approval be obtained before a proportional takeover bid can proceed.

6. SCHEMES OF ARRANGEMENT – OVERVIEW

6.1 INTRODUCTION

In the Australian market, a bidder seeking to acquire 100% of a publicly listed company on "friendly" terms will most commonly seek control through a members' scheme of arrangement, generally completed in a three to four month timeframe.

A members' scheme of arrangement may involve shareholders agreeing to transfer or cancel their shares in the target in exchange for cash or shares in a bidder's company (or a combination of cash and shares). The end result is that the bidder will hold all shares in the target.

6.2 PROCESS

The process is initiated by preparation of an Implementation Agreement between the bidder and the target company, a draft scheme between the target company and its shareholders and an explanatory statement and notice of meeting for target shareholders. The contents of the explanatory statement are prescribed by the Corporations Act (generally it must include all material information relevant to a shareholder's decision to vote in connection with the scheme). Preparation is the responsibility of the target.

The target applies to the Court for an order for the convening of a meeting of shareholders, or meetings of classes of shareholders, whose rights or interests will be affected by the scheme.

Each meeting of shareholders (or class of shareholders) ordered by the Court must approve the scheme as follows:

+ by a majority in number of the shareholders present and voting in person or by proxy; and
+ by at least 75% of the votes cast.

If the scheme is approved at each meeting, the Court will consider orders approving the scheme and the scheme will take effect when the orders are lodged with ASIC.

6.3 ADVANTAGES OF SCHEMES OF ARRANGEMENT

The primary advantage of a members' scheme of arrangement over a takeover bid is that, provided the voting thresholds described above are met, all shareholders (including dissenting shareholders) are bound by the scheme ie a members' scheme of arrangement is an "all or nothing" proposition.

As such, a scheme of arrangement process is generally preferred by a bidder for a "friendly transaction", except in those rare cases where the nature of the register is such that the thresholds involving a number of members can be a deterrent.

7. IMPLEMENTATION OF AN OFF-MARKET TAKEOVER BID

7.1 CONDITIONS

An off-market takeover bid may contain conditions, while an on-market takeover bid cannot. For this reason, bidders seeking 100% ownership of a target will usually make an off-market takeover with a minimum 90% acceptance condition, as this permits them to compulsorily acquire the remaining shares after the close of the offer under the statutory "mop up" procedures outlined in section 7.12 (or to withdraw its takeover bid if that condition is not satisfied). However, certain conditions (such as maximum acceptance conditions and conditions which are within the bidder's control to satisfy) are prohibited.

Examples of common conditions are set out below.

CONDITION	TAKEOVER CONDITION	SCHEME CONDITION
Finance	Subject to certainty (see section 3.1)	Not customary
Minimum acceptance	50.1% or 90% or minimum acceptance conditions common	A scheme has an "all or nothing" outcome; minimum acceptance is replaced by requisite shareholder and Court approvals
MAC	That no MAC occurs in the financial position, business or assets of the target	
Index	Conditions relating to adverse movements in the stock market or in key commodity prices	
Regulatory	FIRB or ACCC approval conditions	
Prescribed Occurences	Such as no insolvency, payment of dividends, capital returns or restructures occurring	
Due Diligence	Given prohibition on conditions in bidder's control, common only in a scheme	

A takeover bid may be declared unconditional in most circumstances so long as the declaration is made at least seven days before the offer period expires.

To actually reach the 90% compulsory acquisition threshold, it is common for a bidder to waive a 90% minimum acceptance condition once it reaches a 70% - 80% stake in the target, as this will often motivate reluctant shareholders to accept the offer as they know the offer will proceed (ie it is unconditional and may overcome mandate restrictions).

It is common for a bidder to set up an institutional acceptance facility. This is essentially an arrangement where a trustee holds acceptance forms on behalf of shareholders who will accept into the offer if actual acceptances and acceptance forms held by the trustee equal or exceed the minimum acceptance condition.

A person's voting power in a company includes votes attached to shares in which it or its associates have a relevant interest.

7.2 DURATION OF OFFER

Offers under an off-market takeover must remain open for acceptance for a minimum of one month but can be extended so that the offer is open for a maximum of 12 months. The offer period will automatically be extended by 14 days if, within the last seven days of the offer period, the bidder's voting power in the target increases to more than 50% or the offers under the takeover are varied to improve the consideration offered.

7.3 VARIATIONS TO TAKEOVER BID TERMS

Off-market takeover bid terms can be varied in a number of different ways including by increasing the takeover price, extending the takeover period or offering additional alternative forms of consideration. Offers are generally varied where the bidder makes an improved offer. Variations can only be made by giving notice to the target, target shareholders and ASIC. A variation which increases the takeover price in the last seven days of the bid period will automatically extend the takeover period by 14 days.

7.4 BIDDER'S ABILITY TO COMPETE ON-MARKET

If an off-market takeover bid is unconditional or subject only to specific "prescribed occurrences", the bidder may purchase shares on ASX in the ordinary course of business. Where a higher cash price is paid outside the takeover, the price payable under the takeover is automatically increased to that higher price.

7.5 SELLING DOWN DURING AN OFFER

Where a bidder's statement has been served on the target company, neither the bidder nor any of its associates are permitted to dispose of any shares in the target unless they are accepting a competing takeover which was launched (or improved) after the bidder's statement was served.

7.6 IMPLEMENTATION AGREEMENT

In a "friendly" deal, the terms of a takeover are agreed between a bidder and the target in an "Implementation Agreement". This agreement will record:

+ the terms of the agreed takeover, including any conditions – it is common to include a condition that all directors of the target recommend the takeover;
+ the timetable for implementing the takeover and announcements;
+ the extent to which due diligence is permitted;
+ how the bidder and target will co-operate to implement the takeover; and
+ any exclusivity arrangements (see section 3.2).

It is common for the Implementation Agreement to include a "fiduciary out" – that is, a provision which allows the target to cease to co-operate with the bidder where a superior offer is made by a competing bidder.

> As an overarching principle, the directors must always act in the best interests of the company and for a proper purpose.

7.7 THE TARGET'S RESPONSE – THE TARGET STATEMENT

The launching of an off-market takeover bid triggers an obligation on the directors of the target company to respond by issuing a target statement.

The target statement must contain specified information including:

+ each director's recommendation as to whether or not the offer should be accepted (or why a recommendation is not given);
+ all the information that target shareholders and their professional advisers would reasonably require to make an informed assessment of whether to accept the offer under the takeover bid.

Where the bidder already has at least 30% voting power in the target or where the target and the bidder share common directors, the target statement must include, or be accompanied by, the report of an independent expert, stating whether the expert believes the takeover offer is fair and reasonable and the reasons for the view.

Even if an independent expert report is not required by the Corporations Act, the directors of the target often consider it appropriate to include such a report.

7.8 SHAREHOLDER INTRANSIGENCE

Where shareholder consent is needed to implement a defensive tactic, such consent may not be readily forthcoming.

Institutional investors, in particular, are wary of any proposed changes to the Constitution of a company that entrenches management and or restricts takeovers (and the consequent ability of shareholders to receive a premium for shares).

7.9 FIDUCIARY DUTIES

The ability of directors to use defensive tactics to avert unwelcome takeovers is restricted in a number of important ways.

The directors of the target owe fiduciary duties to the target. There are two broad categories of duty:

+ the duty to act in good faith; and
+ the duty to exercise care, skill and diligence in the performance of their duties and the exercise of their powers.

In the context of a takeover, the directors have an overriding duty to ensure that shareholders are provided with sufficient information and guidance to enable them to assess the fairness of the offer on its merits and to make an informed decision whether or not to accept the offer.

That being said, there are a number of steps that the directors of a company can legitimately take in the face of a proposal that may involve a change of control. Whether a particular course of action is a legitimate use of the powers of the directors will depend on the facts of any particular case and is an issue that requires careful consideration.

7.10 DEFENCE

In the case of a hostile takeover, the takeover will focus attention on the bidder. Criticism may originate from the target seeking to defend itself, other predators seeking to launch rival takeover bids or from the media. The bidder will need to consider possible avenues of attack and minimise its vulnerabilities.

In hostile takeovers, it is common for a target company to "attack" the disclosure of the bidder in their bidder's statement or to seek to delay the despatch of the target statement (therefore extending the overall takeover timetable) through making submissions alleging "unacceptable circumstances" to the Takeovers Panel.

In Australia, the Corporations Act, the Listing Rules, the Takeovers Panel decisions and policy, and common law, limit the extent to which frustrating tactics can be utilised.

Defensive takeover tactics essentially fall into two broad categories—the proactive kind, which operates as a deterrent to takeover bid attempts before they occur, and the reactive kind, which are adopted only after a specific takeover bid is made or anticipated.

PRO-ACTIVE DEFENCES INCLUDE:

+ ensuring placement of shares with those likely to support the company. Employee share schemes and superannuation funds are sometimes used in this way
+ Listing Rule 7.9 prohibits a target from issuing shares without shareholder approval for a period of three months after it is notified that a person is making, or proposes making, a takeover bid. There are a few exceptions to this prohibition
+ use of inter-company shareholdings between associated companies
+ amendment of the Constitution to introduce provisions making takeovers more difficult or less attractive. Provisions of this kind include the requirement of shareholder approval for proportional takeovers or (in very limited cases) maximum levels of shareholding
+ use of share buy-back provisions under the Corporations Act to enable the company to repurchase some blocks of shares

REACTIVE DEFENCES INCLUDE:

+ criticism of the bidder and the takeover, to dissuade shareholders from accepting it
+ announcing any new positive information that was previously unannounced
+ seeking a "white knight" to make a rival takeover bid or to acquire a large shareholding asset redeployment or corporate restructuring

Listing Rule 10.18 restricts the ability of a company to pay termination benefits to directors or employees actioned on a change of control.

Asset redeployment may be constrained by Listing Rule 11.2, requiring shareholder approval for disposal of the company's main undertaking.

7.11 TAKEOVERS PANEL POLICIES

ASIC supervises the operation of the Corporations Act and has wide powers to investigate, amongst other things, the conduct and share trading activities of parties involved in a takeover. Through its regional offices in each state of Australia, ASIC also reviews most of the documents issued by parties involved in a takeover.

ASX may become involved in a takeover if it is concerned that its rules are not being complied with by the parties involved in the takeover. The principal concern of ASX is to ensure that there is an informed market in shares in the target company.

The Takeovers Panel is a non-judicial body comprised of representatives of industry - in particular the securities industry and of the legal and accounting professions. ASIC, the bidder, the target or any other person whose interests are affected by circumstances relating to a takeover bid may apply to the Takeovers Panel in order to obtain a declaration of "unacceptable circumstances". In such circumstances, the Takeovers Panel has a broad power to make orders in relation to the takeover.

In addition to its dispute resolution powers, the Takeovers Panel has issued guidance governing takeover bids.

A breach of the "20% Rule" does not automatically invalidate a share acquisition. However, the Takeovers Panel, which is intended to be the main forum for resolving disputes during a takeover bid, can make a wide range of remedial orders on the application of ASIC, the bidder and/or the target or any other person whose interests are affected, including:

+ restraining the exercise of voting rights;
+ restraining acquisition or disposal of shares;
+ directing the disposal of shares;
+ directing that the shares be vested in ASIC; and
+ cancelling an agreement or offer made under a takeover bid.

7.12 MOPPING UP – COMPULSORY ACQUISITION

Where a bidder has acquired a 90% stake in the target, the Corporations Act provides a statutory ability for the bidder to call for a security to be delivered to it and an ability for a shareholder to require the acquisition of its securities in certain circumstances.

Following a takeover bid, a bidder may compulsorily acquire any securities in a takeover class if by the end of the offer period:

+ the bidder and its associates have relevant interests in at least 90% by number of the securities in the bid class; and
+ the bidder and its associates have acquired at least 75% by number of the securities that the bidder offered to acquire under the takeover bid (whether the acquisitions occurred under the bid or otherwise).

In addition, if the bidder fails to meet either or both of those requirements, it may nevertheless compulsorily acquire securities in the bid class with the approval of the Court.

A notice of compulsory acquisition must be given within one month after the offer closes or after the date of any applicable Court order approving compulsory acquisition. The bidder is then entitled to acquire the outstanding securities on the terms offered under the takeover bid.

Dissenting shareholders may contest the compulsory acquisition by application to the Court.

If the 90% threshold is reached and the bidder decides not to use the compulsory acquisition mechanism, the bidder must make an offer to remaining shareholders in the bid class to buy their shares at the bid price. The bidder must make similar offers to holders of securities that are convertible into bid class securities except where takeover offers were made for the convertible securities.

7.13 GENERAL COMPULSORY ACQUISITION POWER

In addition to the post-takeover bid power of compulsory acquisition outlined above, Part 6A.2 of the Corporations Act contains a general power of compulsory acquisition outside the context of a successful takeover bid (or alongside a successful takeover bid in relation to some but not all of the target's securities), enabling:

+ a person who is a "90% holder" of one class of securities to acquire the remaining securities of that class; and
+ a person who is a "90% holder" in the sense of both having voting power in the relevant company of at least 90% and holding either alone or with a related body corporate "full beneficial interests" in at least 90% by value of all of the securities of the company that are either shares or convertible into shares, to acquire all the outstanding shares, or securities convertible into shares, of the company.

There are also time limits on the exercise of these rights.
This power is available at any time, not only after a takeover, provided the holder commences the compulsory acquisition process within six months of becoming a 90% holder. In this circumstance an expert's report must accompany the compulsory acquisition notice.

8. CHOOSING BETWEEN A SCHEME OF ARRANGEMENT OR TAKEOVER

TAKEOVER	FEATURE	SCHEME
Acquisition of securities by bidder from each individual shareholder (may occur on-market or off-market).	Mechanism of acquisition	May take various forms (including transfer of securities, or cancellation and new issue of securities). Transaction effected under Implementation Agreement, approved at meeting of target company shareholders and Court.
Takeover bid may be subject to fulfilment of conditions (except if offer made on-market). Offer could be adversely affected by conditions remaining unsatisfied and the offer needing to remain open while waiting for conditions to be satisfied.	Conditions	Schemes may be subject to fulfilment of conditions. Conditions may be satisfied after the scheme meetings, delaying the second Court hearing.
Terms and conditions can be varied (although there are limitations on extending the offer period during the last seven days of the offer period). Offer period must be minimum of one month and up to 12 months. The bidder is limited to acquiring up to 20% (subject to a lower limit under Australia's foreign investment rules(see section 2)) until the offers are made, although the bidder may acquire securities on-market during the offer period in some circumstances.	Flexibility	Scheme documentation is relatively inflexible following the first Court hearing to convene the scheme meeting (as changes to terms may only be made with Court sanction). Can use scheme provisions to facilitate a corporate restructure or divestment and can be structured to cover all of the target's securities by having concurrent schemes for different classes of securities. The bidder is limited to acquiring up to 20% until implementation (subject to a lower limit under Australia's foreign investment rules (see section 2)). The bidder's shares in the target may be treated as a separate class due to the bidder's interests in the proposal succeeding, and the bidder may therefore have to vote as a separate class of member or abstain from voting. This may increase the risk that a party could obtain a "blocking stake" to stop the remaining members, not associated with the bidder, approving the proposal.
Yes, may secure due diligence access, break fee, exclusivity arrangements, board recommendation and pre-bid stake before launching takeover.	Pre-acquisition discussions possible	Yes, must have discussions with target board before proceeding with scheme. Similar issues as under a takeover bid regarding due diligence, break fee arrangements etc.
Once publicly announced, the bidder must proceed with takeover bid within two months unless there is a material new circumstance or change in circumstances warranting not proceeding or a breach of proposed	Compulsory takeover	May announce intention to make acquisition by scheme but not proceed.
An offer under an off-market takeover bid cannot be withdrawn without the written consent of ASIC. That consent is seldom given.	Withdrawal	Target company may withdraw from the scheme at any point up until the Court approves the scheme at the second Court hearing.
The bidder controls and initiates the process at all stages (subject to intervention by the Takeovers Panel).	Control of transaction	Target company controls the process subject to the terms of an Implementation Agreement.
As a technical matter, it is not essential as a takeover bid can proceed as "hostile". However, co-operation by the target board would, as a practical matter, be preferable. Practically, a recommendation in favour of the takeover bid is key.	Target co-operation	Essential, the scheme is that of the target company itself. Target directors need to conclude the transaction is in shareholder's best interests, not merely respond.
No, but ASIC has a general administration role and usually reviews bid documents and the Takeovers Panel is the primary dispute resolution body.	Court approval required?	Yes, to order the scheme meetings, and to approve the scheme.
Not required.	ASIC approval	The Court may not approve a scheme unless ASIC issues a certificate confirming that they have no objection to the scheme.

TAKEOVER	FEATURE	SCHEME
Once the bidder's statement is lodged with ASIC, timetable largely prescribed by statute (but need to factor in compulsory acquisition process). Timing varies - unlikely to be less than three months. See indicative timetable in annexure.	Timetable	No statutory timetable (but in practice time period likely to be similar to takeover). Court convenes the meeting and completion to then follow Listing Rule timetable. See indicative timetable in annexure.
Key documents are the bidder's statement and the target's statement. High level of disclosure. All information known to the bidder (and not previously disclosed to shareholders) which is material to shareholders' decision. Scrip takeovers generally require prospectus-level disclosure. Practice to lodge a substantial holder notice during the offer period.	Disclosure	Key documents are the scheme Implementation Agreement, notice of scheme meeting and explanatory statement. Responsibility for disclosure is with the target. Effectively same level of disclosure as under a takeover.
Required in certain circumstances (eg connection between bidder and target) and usual in hostile takeovers.	Independent expert's report	Usually included in scheme documents.
Possible rival bidders but bidder has flexibility to vary offer. 100% ownership not guaranteed - must receive sufficient acceptances to reach compulsory acquisition (see below). Institutional acceptances difficult to achieve without waiving 90% minimum acceptance condition. Very common that a bidder must drop the 90% minimum acceptance condition prior to achieving the 90% threshold.	Possible vulnerabilities	Scheme documentation subject to ASIC and Court scrutiny. Court hearings may provide forum for dissidents. Can be difficult to vary scheme to meet competition from other bidders and has timetable implications. Limited flexibility in timetable once dates set. Opportunity for manipulation of voting by dissident shareholders (usually by splitting shares into small parcels).
Offer can be made unconditionally (or conditions may be waived) enabling shares to be acquired very shortly after dispatch of offers to shareholders. Theoretically, the earlier the acquisitions are made, the less the risk of adverse share price fluctuations.	Timing of acquisition and focus on value	Shares are not acquired until after final Court orders are lodged and the scheme is implemented. Shareholder decision will be focused on value of securities at the time of the scheme meeting, which will be at least one month after the preparation and dispatch of final scheme documentation.
No minimum thresholds, although the offer may have a minimum acceptance condition. There are also the 90% thresholds in the Corporations Act to commence compulsory acquisition.	Minimum thresholds	To be effective, requires approval of more than 50% in number and 75% in votes of those scheme members who attend and vote at the relevant scheme meeting (whether in person or by proxy). There may be classes of scheme members who need to approve the scheme in separate scheme meetings.
Offer may be made without the minimum acceptance thresholds (or minimum threshold condition may be waived).	All or nothing	Scheme is all or nothing ie if it is approved, 100% of the shares will be acquired or, if not approved, no shares will be acquired. Could propose a scheme with fall-back takeover if scheme not approved.
May make a separate takeover bid for convertible securities. May also compulsorily acquire if 90% of voting shares acquired.	Dealing with convertible securities	Can be done concurrently with scheme for ordinary shares.
Yes, pre-bid. During takeover, only if not likely to induce acceptance or disposal of securities.	Collateral benefits	Yes as part of scheme transactions but consideration needs to be given to potential voting implications.

9. REGISTERED MANAGED INVESTMENT SCHEMES

9.1 BACKGROUND

Under the Corporations Act, a MIS is a scheme in which:

- people contribute money (or money's worth, eg property) as consideration to acquire an interest in benefits produced by that MIS;
- any of the contributions are pooled or used in a common enterprise to produce financial or other benefits; and
- the members who contributed do not have day-to-day control over the operation of the MIS.

This broad definition will capture many arrangements that go by more financially or operationally orientated names, eg investment funds, hedge funds and A-REITS.

In Australia, it is common for these MISs to be set up as unit trusts, compared to other jurisdictions where limited partnerships are often preferred, eg the US, UK, Hong Kong and Singapore. Under an Australian unit trust, the investors/beneficiaries contribute to the capital of the trust by subscribing for units in the trust in a similar fashion as shareholders do for shares in a company.

The unit trust is often operated by a third party trustee who takes fees for administering the trust. In some cases, the unit trust will be stapled to a company, such that securities in the unit trust and company may not be dealt with separately. In stapled structures, the trustee may be owned by the corporate in the staple, creating what is referred to as an internalised management structure.

In certain circumstances, a unit trust will need to be registered with ASIC as a MIS under Chapter 5C of the Corporations Act. This will generally be required if the trust is, widely held (more than 20 members), or promoted by a person in the business of promoting MISs. If offers of interests in the trust are only made to excluded offerees (eg, sophisticated or wholesale persons), then the MIS will not need to be registered. ASX cannot list a MIS unless it has been registered with ASIC.

The trustees of registered MISs are known as responsible entities and have additional rights and obligations imposed on them under Chapter 5C of the Corporations Act. Due to a range of local licensing requirements, sometimes a third party professional responsible entity will be appointed to act in that role. A responsible entity will often also appoint a third party manager (often the promoter of the scheme) to actively manage the trust in exchange for its own fees (less costs).

The responsible entity's fees must be set out in the registered scheme's Constitution.

This section of the guide describes how registered schemes set up as unit trusts are treated by the Corporations Act and other Australian laws that govern control transactions.

9.2 TAKEOVERS

The takeovers provisions of the Corporations Act apply to MISs that are listed as if they are a listed company, with several modifications that reflect the external management model.

For example, voting and general meetings relate to the registered MIS but it will be the responsible entity that calls and holds the meeting.

The:

- obligations and powers that are imposed or conferred on a company are imposed or conferred on the responsible entity of the registered MIS;
- directors of the responsible entity are treated as if they are the directors of the MIS.

9.3 TRUST SCHEMES

The Corporations Act provisions governing company schemes of arrangement described in section 6 do not apply to units in a registered MIS and so cannot be used to effect friendly control transactions as they can for companies.

Instead, Australian practice has been to rely on the respective state Trustee Acts provisions that allow the trustee (ie the responsible entity) to apply to the relevant State Supreme Court for advice or direction on the management or administration of the trust (ie registered MIS) – for example, see section 63 of the Trustee Act 1925 (NSW).

The responsible entity as trustee of the registered MIS will apply to the Court for advice and direction with respect to amending the registered MIS's constitution under a power provided for in the Corporations Act. The amendment will authorise the responsible entity to transfer all of the units in the registered MIS to the acquirer subject to unitholder approval.

It is market practice, to mirror the company scheme of arrangement process, see section 6.

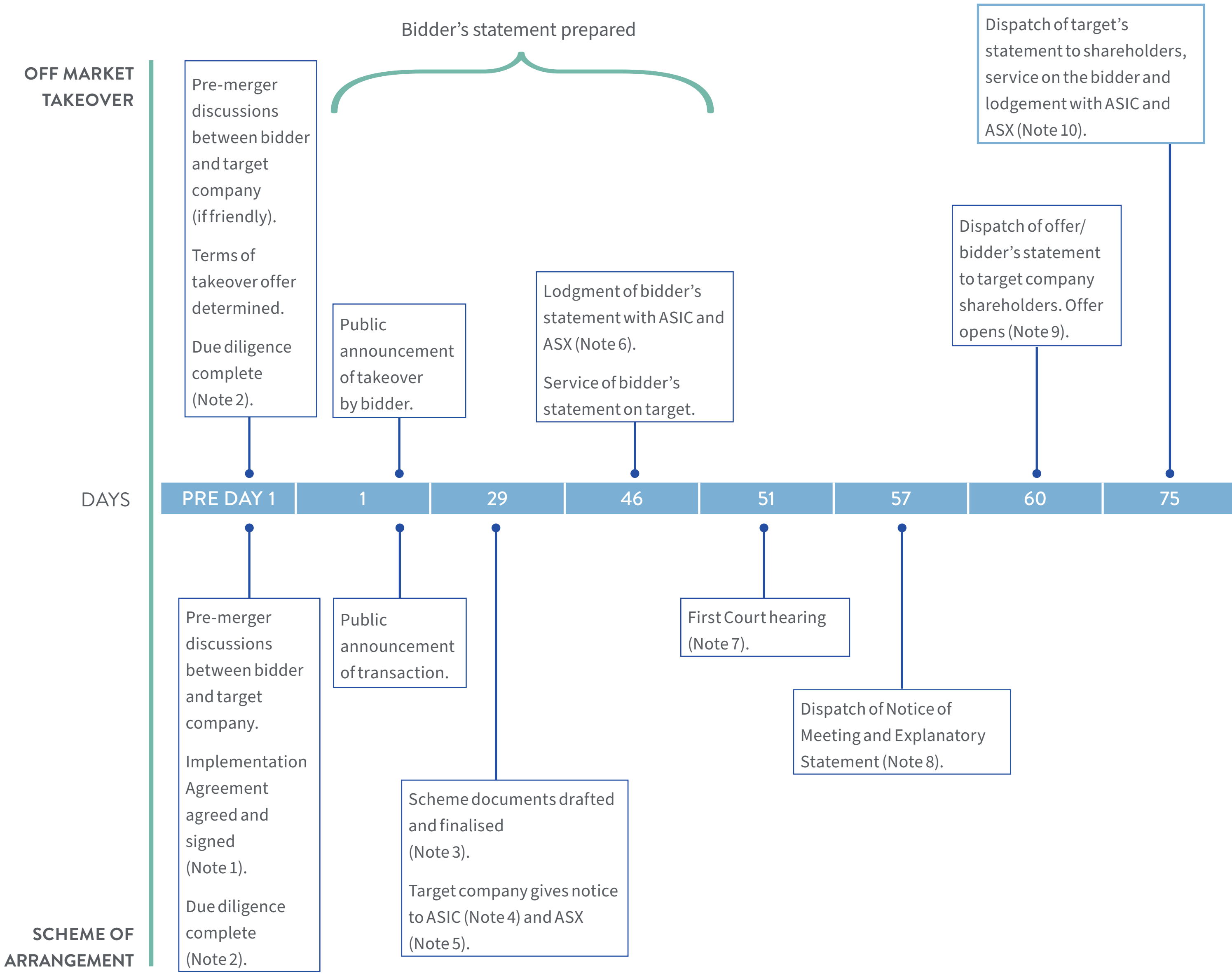
9.4 CHANGE OF RESPONSIBLE ENTITY

There is a third control transaction available to persons seeking control over the assets of a registered MIS and that is to replace the responsible entity of the MIS. Replacing the responsible entity will not give the new responsible entity an unfettered ability to deal with the registered MIS's assets as it will still be subject to the Corporations Act, the scheme's Constitution and, where listed, the Listing Rules. Instead, this allows the new responsible entity to manage the registered MIS and in return receive the fees it is entitled to under the registered MIS's constitution.

Changing a registered MIS's responsible entity can either be friendly (ie the current responsible entity retires and appoints the new responsible entity as its successor) or hostile. The Corporations Act provides that the members of a registered MIS may vote to remove and replace the responsible entity by extraordinary resolution. An extraordinary resolution has certain notice requirements and must be approved by 50% of all members who are entitled to vote (including those not present). In order to call a meeting, an agitating member(s) must either:

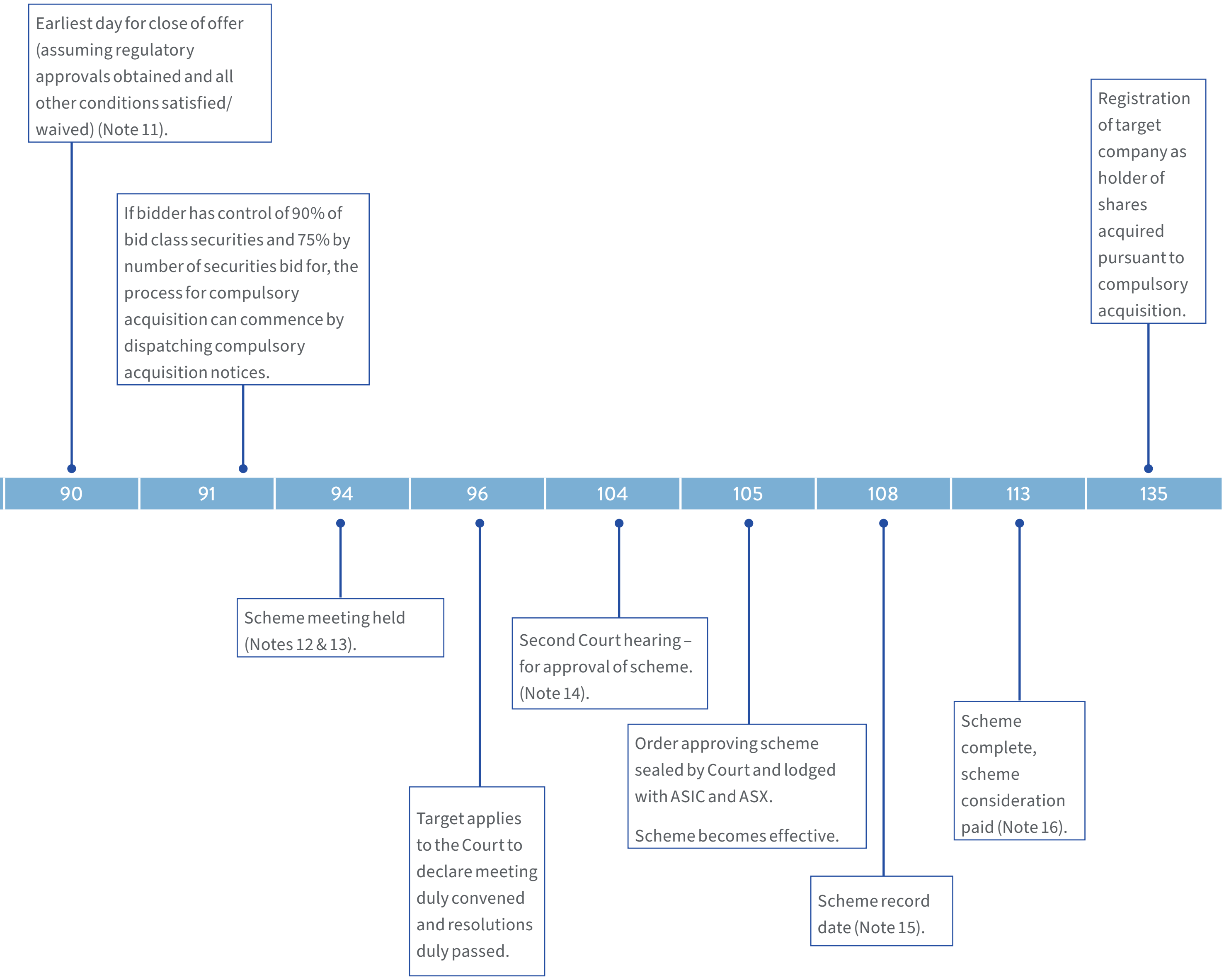
- hold 5% of the votes entitled to be cast on the extraordinary resolution; or
- be at least 100 members, entitled to vote on the extraordinary resolution.

ANNEXURE – HIGH LEVEL INDICATIVE TIMETABLE*



NOTES

1. Assumes no non-binding term sheet or announcement prior to the negotiation of a binding Implementation Agreement.
2. Due diligence may be limited to public information only or, if deal is friendly, may include non-public information.
3. Assumes four weeks from announcement to complete scheme documents.
4. At least 14 days' notice (unless ASIC or Court permits less) of the hearing of the application must be given to ASIC and ASIC must be given a reasonable opportunity to examine the documents. In practice, at least three weeks' notice should be given to ASIC.
5. Where a company proposes to reorganise its capital, it must notify and liaise with ASX to ensure that an orderly market is maintained for its securities and provide certain information as to the effect of the scheme upon capital in the explanatory statement.
6. The timetable indicates the latest lodgement date possible in order to comply with the statutory timetable. In the case of a hostile or contested takeover, it would be much more likely for the documents to be lodged either on or soon after day one (when the public announcement is made).
7. This is a single party hearing to approve the Notice of Meeting and Explanatory Statement and to order the scheme meeting.



8. Assumes five days to print these documents after the first Court hearing. 28 clear days' notice required. This assumes all meetings are able to be held on the same day.
9. The bidder's statement/offer must be dispatched to target shareholders between 14 days and 28 days from service of the bidder's statement on the target so as to be dispatched to target shareholders not later than two months after announcement of the offer. The target may consent to earlier dispatch. It is assumed that dispatch of the bidder's statement is completed on one day.
10. The target's statement must be dispatched by the target company to each of the shareholders no later than 15 days after dispatch of the bidder's statement.
11. Offer cannot close earlier than one month after the offer opens. An offer cannot remain open for more than a 12 month period.
12. Assumes a period of three months from announcement to obtain all regulatory approvals and satisfy all other conditions. This period may be shorter or longer depending on the circumstances.
13. At least seven days before date of second hearing.
14. This date is indicative only. The second Court hearing is often accelerated.
15. Usually three business days after scheme becomes effective.
16. Occurs five business days after scheme record date.

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+ Insolvency and Restructuring Deal of the Year – APA Group's acquisition of Basslink.
+ Mid-Market Deal of the Year – Anchorage Partners' sale of Rail First Asset Management.
+ Excellence in Technology & Innovation.

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+ 1st on number of announced M&A deals – Bloomberg.
+ 1st on the value of ECM deals acting for the manager (JLMs/underwriters) – Refinitiv.
+ Ranked in the Top 10 APAC Legal Advisors for Private Equity & Venture Capital by Refinitiv.

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2023 MERGERMARKET AWARDS

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+ Adamantem on its acquisition of ASX-listed Legend Corporation Limited by way of scheme of arrangement
+ AMA Group on its announced demerger and $500 million take private of its Panels business by Blackstone Private Equity
+ Anheuser-Busch InBev on its $16 billion sale of Carlton & United Breweries to Asahi Group
+ Anheuser-Busch InBev on the Australian aspects (CUB/Fosters) of its US$107 billion takeover of SAB Miller, the largest takeover in the world in 2016
+ Ansell on the US$600 million sale of its Sexual Wellness business to Humanwell Healthcare and CITIC Capital Partners
+ APN Funds Management (as responsible entity of Generation Healthcare REIT) in respect of the $500 million takeover bid for Generation Healthcare REIT by NorthWest Australia
+ Atlas Arteria on its response to IFM Global Infrastructure's acquisition of a 19% interest in Atlas Arteria, valuing the company at over $7.6 billion
+ Beach Energy on all aspects of its successful $1.585 billion competitive bid to acquire Lattice Energy from Origin Energy and related debt and equity capital raisings
+ BGH Consortium (including BGH Capital, AustralianSuper and Rod Jones) on its proposed $2.3 billion acquisition of Navitas by scheme of arrangement
+ BGH Capital led consortium on its $4 billion takeover proposal to acquire Healthscope
+ Blackstone (as part of a consortium including Canada Pension Plan Investment Board and GIC) on the acquisition of a controlling interest in a new entity housing the Financial and Risk business in joint venture with the previous owner Thomson Reuters, at an overall valuation of US$20 billion
+ Boardriders, Inc on its acquisition of Billabong by scheme of arrangement for an enterprise value of $380 million
+ The Carlyle Group (through its Carlyle International Energy Partners platform) on the Australian aspects of its acquisition of EnerMech Group from Lime Rock Partner
+ Carlyle Private Equity on the $517 million sale of its 50% interest in Coates Hire to its joint venture partner, National Hire (a subsidiary of Seven Group Holdings)
+ CHAMP Private Equity on the $1 billion sale of Accolade Wines
+ CHAMP Private Equity on its $170 million acquisition of the Jaybro business as part of a competitive sales process
+ Cleanaway Waste Management Limited (Cleanaway) (ASX:CWY), on its $168.5 million acquisition of Global Renewables Holdings Pty Ltd (GRL)
+ CIMIC on its response to the unsolicited takeover bid by HOCHTIEF Australia, valuing CIMIC at $6.85 billion
+ Coca-Cola Amatil on the joint acquisition by Amatil and its major shareholder, US-based The Coca-Cola Company (TCCC), of a 45% equity stake in Made Group, an independent Australian beverage manufacturer
+ Cover-More on the $739 million recommended scheme proposal from Zurich Insurance Company
+ Crescent Capital Partners on the $205 million sale of its GroundProbe business to Orica
+ Direct Group Investments Pty Ltd in relation to the sale of 100% of the share capital of Direct Group Investments Ltd and Interfine Direct Pty Ltd to CPEC Capital
+ DuluxGroup on Nippon Paint's $4.2 billion proposal to acquire DuluxGroup by scheme of arrangement
+ Energy Developments on its $1.4 billion acquisition by DUET Group by scheme of arrangement
+ GrainCorp on the $3.3 billion (enterprise value) approach by Long-Term Asset Partners
+ GrainCorp on the sale of its Australian Bulk Liquid Terminals business to ANZ Terminals for an enterprise value of approximately $350 million
+ Great Panther Silver on its $144 million acquisition of Beadell Resources by scheme of arrangement
+ Harbour Energy/EIG Partners consortium on the proposed $14.4 billion takeover bid for Santos
+ Investa Commercial Property Fund on the $3.35 billion battle for the ASX listed Investa Office Fund between Oxford Properties & Blackstone
+ IOOF on its $975 million acquisition of Australia and New Zealand Banking Group's (ANZ) OnePath Pensions and Investments and aligned dealer groups businesses
+ Jacobs Engineering Group Inc. on Australian legal aspects of its $4.6 billion sale of its energy, chemicals and resources division to WorleyParsons

- Jadestone Energy on its acquisition of the Montara Oil Field from PTTEP which included advising on a US$100 million senior debt facility and Australian law aspects of a US$110 million capital raising and AIM Listing
- KKR on its $2 billion acquisition of MYOB Group by scheme of arrangement
- Lifehealthcare on its successful $168 million sale to Pacific Equity Partners by scheme of arrangement
- Liverpool Partners on its acquisition (together with Adamantem Capital) of Zenitas Healthcare for $108 million by scheme of arrangement
- Macquarie Asset Management and its co-investors on the $3.58 billion sale of Axicom to Australia Tower Network, owned by AustralianSuper and Singtel
- Macquarie Infrastructure and Real Assets (MIRA) on its $2.6 billion acquisition of Bingo Industries Limited by scheme of arrangement
- Mineral Resources on the sale process for the $2 billion divestment of up to a 49% interest in its Wodgina lithium mine assets
- Neptune Energy Group (which is backed by funds advised by The Carlyle Group, CVC Capital Partners Fund VI and a group of co-investors) on the Australian aspects of its EUR 4.7 billion acquisition of a 70% shareholding in ENGIE E&P International S.A. from France's ENGIE Group
- NSW Government in relation to the $2.6 billion concession of Land and Property Information NSW
- Pacific Equity Partners and The Carlyle Group on their $1.23 billion acquisition of iNova Pharmaceuticals from the Valeant Group
- PayPal on its US$400 million acquisition of HyperWallet Inc., and the integration of the Australian Hyperwallet business
- Pemba Capital Partners (and other shareholders) on the $701 million sale of Device Technology Australia to Navis CapitalPemba VCLP (a newly established PE)
- Platinum Equity LLC on the Australian law aspects of its US$ 2.5 billion acquisition of Multi-Color Corporation (a leader in global label solutions)
- Quadrant Private Equity and the minority owners of the Real Pet Food Co on the $1 billion sale of the Real Pet Food Co to a consortium of investors including New Hope, Hosen and Temasek
- Quadrant Private Equity on its $160 million investment in the AMF, Kingpin and Playtime businesses in Australia and New Zealand
- Qube led consortium on the $9 billion acquisition of Asciano (the largest public M&A deal in Australia in 2016)
- Ruralco Holdings on its proposed $468 million acquisition by Nutrien by scheme of arrangement
- Shaw and Partners Limited on its partial sale to EFG International
- Sonic Healthcare on its $750 million acquisition of Aurora Diagnostics and its $600 million placement and related share purchase plan to part fund that acquisition
- Spotless on the defence of the unsolicited $1.3 billion takeover bid by Downer EDI
- State of NSW as a seller in the $1.6 billion sale of Property Exchange Australia to a consortium comprised of Link, CBA and Morgan Stanley
- Telstra in connection with a new venture capital fund launched by Telstra Ventures, the venture capital arm of Telstra (deal value of US$500 million). The new fund is backed by Telstra and HarbourVest, one of the world's largest private equity investment firms
- Telstra Corporation in relation to the merger of Fox Sports Australia (owned by News Limited) and Foxtel (owned 50/50 by News Limited and Telstra)
- The Stars Group Inc. on its acquisition of 80% of CrownBet, and CrownBet on its successful bid to acquire William Hill (aggregate deal value of $650 million)
- TPG Capital on its $1 billion (enterprise value) acquisition of pet and vet care company Greencross
- TPG Capital on the acquisition of Novotech Holdings
- TPG consortium (comprising TPG and the Ontario Teachers' Pension Plan) on the proposed acquisition of Fairfax
- Virtus Health on the competing proposed scheme of arrangement and simultaneous takeover bid by CapVest, and unsolicited but ultimately recommended takeover bid by BGH Capital, dubbed by the Australian Financial Review as "the M&A battle of the year"
- Wesfarmers on the sale of it 13.23% stake in Quadrant Energy alongside co-sellers Brookfield, Macquarie and AMB Holdings (value of US$2.15 billion cash + contingent payments related to the Bedout Basin)
- Wesfarmers on its strategic review of Officeworks, including consideration of potential trade sale or IPO
- Xuchen International, a subsidiary of Chengtun Mining Group Co, in relation to the proposed $109 million acquisition of Nzuri Copper by scheme of arrangement
- Yancoal Australia (target role) on its response to the unsolicited take private proposal from Yankuang Energy valuing Yancoal at $7 billion

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