MAYER | BROWN

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Public M&A Spotlight

Public M&A in the US, UK, France, Germany and Hong Kong

Contents

Our Cross-Border Public M&A Experience

When executing public M&A transactions, dealmakers need to understand local market practice as well as the local regulatory environment.

Mayer Brown is pleased to present this Public M&A Spotlight which compares the rules and regulations governing public M&A transactions in the US, the UK, France, Germany and Hong Kong, including the key differences in deal structures and timetables. It has been prepared by a dedicated team of Mayer Brown partners who regularly work together, share knowledge and cooperate on a cross-border basis in relation to public M&A deals. Our lawyers' experience in comparing and contrasting takeover regimes helps us to analyze different approaches to issues with a view to finding the most effective way to execute our clients' public M&A transactions.

We are a truly global law firm – we operate as one partnership across all our offices. With over 800 lawyers in the US, over 300 in Europe and over 200 in Asia, we have a deep bench of experienced public M&A lawyers across the world's major financial centres. In addition to providing our clients with the highest quality advice and expertise on takeover rules and regulations, our team of globally integrated public M&A lawyers offer valuable insights into the local political and cultural factors that are playing an increasingly important role in public M&A transactions.

If you have you any questions or require advice on the matters and topics discussed in this Public M&A Spotlight, please contact:

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Part One: Recent developments in public M&A

US

MORE PUBLIC M&A LITIGATION FILED IN US FEDERAL COURTS

In January 2016, the Delaware Chancery Court issued its decision in In re Trulia, Inc. Stockholder Litigation, which sharply curtailed the ability of plaintiffs' lawyers to be awarded attorneys fees by Delaware courts for "disclosure-only" settlements of stockholder class actions for state law claims brought in connection with public company M&A transactions. The Trulia decision, together with Delaware's endorsement of forum selection provisions, which Delaware corporations can adopt to require that such suits be brought in Delaware, and the willingness of courts of other states to enforce such provisions, has left class action plaintiffs without the option of bringing such suits in the courts of other states. The result is that suits in connection with public company M&A transactions are not as often being filed in state courts (such as Delaware Chancery Court) but are increasingly being brought in US federal courts. Such suits typically allege disclosure violations under federal securities laws, including Section 14 of the Securities Exchange Act of 1934.

FULLY INFORMED STOCKHOLDER APPROVAL IMMUNIZES TRANSACTIONS FROM ATTACK

The Delaware Supreme Court's October 2015 decision in Corwin v. KKR Financial Holdings LLC, et al. has also contributed to a decline in the number of suits brought in Delaware state courts against the boards of directors of target companies in public company M&A transactions. In *Corwin*, the Court held that in a public company transaction where a controlling stockholder is not the acquirer, if the company's disinterested stockholders approve the transaction in an uncoerced vote where all of the material facts relating to the transaction were disclosed to them, the board of directors of the company is entitled to the benefit of the highly deferential business judgment rule in any stockholder lawsuit alleging that the directors breached their fiduciary duties to the company's stockholders in connection with the transaction. The practical effect of the Court's decision is that, in the typical post-closing breach of fiduciary duty litigation for a Delaware public company transaction not involving a controlling stockholder, the defendant directors of the company will prevail, even if the directors' conduct is subject to the enhanced scrutiny of the so-called "Revlon duties", if the transaction was approved by an uncoerced, fully informed vote of the corporation's stockholders.

DEVELOPMENTS IN APPRAISAL LITIGATION

Generally, appraisal rights entitle stockholders that did not vote in favor of a merger to demand that a court determine the fair value of their shares, resulting in such stockholders being paid the court-determined fair value of those shares instead of receiving the merger consideration paid in the transaction. Historically, in most appraisal proceedings, the court-determined fair value exceeded the amount of the merger consideration paid in the transaction. During the last several years, there has been a spike in the number of appraisal cases in connection with public company transactions, particularly for Delaware corporations. A great deal of the appraisal activity has been driven by hedge funds ("appraisal arbitrageurs") that purchase shares of public companies after the public announcement of a merger for the sole purpose of exercising appraisal rights so that they can seek a court-determined fair value award at a price in excess of the merger consideration that was paid in the transaction. In recent years, and partially in response to the significant increase in appraisal litigation, some appraisal decisions of the Delaware Chancery Court resulted in determinations that fair value is equal to the amount of the merger consideration. In addition, the Delaware Supreme Court's decisions in DFC Global Corp. v. Muirfield Value Partners, L.P. (August 2017) and Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd. provide additional support for courts to defer to the amount of the merger consideration in determining fair value in appraisal actions, particularly in circumstances where the transaction is the result of a robust sale process and the market for the company's stock is efficient.

UK

ASSET SALES

The Takeover Code does not regulate generally sales of assets by public companies. However, following a number of recent transactions where companies subject to offers governed by the Takeover Code decided to sell all of their assets to a third party and return the proceeds to shareholders as an alternative to proceeding with an offer, the Takeover Panel determined that certain changes to the Takeover Code were necessary to prevent parties from circumventing its rules.

As a result, with effect from January 2018, the Takeover Code has been amended to prevent an offeror from avoiding the application of the Code by structuring a deal as an acquisition of significant assets of the target. For example, where a person makes a statement pursuant to Rule 2.8 (Statements of intention not to make an offer) of the Takeover Code that it does not intend to make an offer for a company, the person making the statement (and any person acting in concert with them), will now be prohibited for a period of six months from purchasing, or agreeing to purchase, assets which are significant in relation to the offeree company (i.e. in addition to the prohibition from acquiring an interest in the offeree company of 30% or more in the voting rights). In assessing whether assets are significant for these purposes, the Takeover Panel will have regard to consideration, assets and profits tests set out in the Takeover Code, with relative values of more than 75% normally being regarded as significant.

Where, in competition with an offer or a possible offer, an offeree company announces its intention to sell all or substantially all of the company's assets and to return to shareholders all or substantially all of the company's cash balances, including the proceeds of the asset sale, any statement by the company quantifying the cash sum expected to be returned to shareholders will now be treated as a "quantified financial benefits statement" and the relevant reporting and disclosure requirement of the Takeover Code in relation to such statements will apply.

RESTRICTIONS ON FRUSTRATING ACTIONS

Rule 21.1 (Restrictions on frustrating actions) of the Takeover Code restricts the board of an offeree company from taking action which may result in an offer or possible offer being frustrated unless the offeree company obtains shareholder approval. This includes the sale of material assets or entry into contracts otherwise than in the ordinary course of business.

With effect from January 2018, amendments have been made to the Takeover Code to clarify that, instead of seeking shareholder approval, the board of an offeree company may propose to take the (otherwise restricted) action conditional upon the offer being withdrawn or lapsing. The Takeover Code now requires that where shareholder approval is sought for a proposed action under Rule 21.1, or would be sought but for the fact that the action is conditional on the offer being withdrawn or lapsing, the board of the offeree company must send a circular to shareholders containing certain specified information. Where shareholder approval is sought, the board must obtain a "fair and reasonable" opinion as to the terms of the proposed action from a competent independent advisor.

Rule 21.1 has also been amended to allow an offeree company to pay an inducement fee to an asset purchaser (or in relation to any transaction to which Rule 21.1. applies) without shareholder approval provided that the fee does not exceed the lower of (a) 1% of the value of the consideration for the asset disposal; and (b) 1% of the value of the offeree company calculated by reference to the value of the offer.

UPDATE TO PRACTICE STATEMENT 20

In April 2017, Practice Statement 20, which sets out guidance on the requirement for secrecy before, and the timing of, possible offer announcements under Rule 2 of the Takeover Code, was amended:

- to clarify that at all times during an offer period, including when any potential Bidder has not been publically named, the Takeover Panel must be contacted before more than a total of six parties are approached about an offer or possible offer; and
- to provide the following new guidance on meetings with the Target's or Bidder's shareholders which take place prior to commencement of an offer period and which relate to a possible offer:
  - any such meeting must be attended by an appropriate financial adviser or corporate broker; and
  - the financial adviser or corporate broker must, by not later than 12 noon the following business day, provide a written confirmation to the Takeover Panel that (a) no material new information or significant new opinions relating to the possible offer were provided during the meeting; or (b) any such new information will be published by no later than the announcement of the offer. Where no representative of, or adviser to, the Bidder or Target was present other than the financial adviser or corporate broker and no material new information was provided during the meeting, then a derogation from the requirement to provide written confirmation to the Takeover Panel will apply.

NEW CHECKLISTS AND SUPPLEMENTARY FORMS

The Takeover Panel has published new checklists and supplementary forms which, as of December 2016, must accompany any final form firm offer announcement, offer document, Target board circular, scheme circular or Rule 15 offer/proposal. There are also supplementary forms which relate to intention statements, profit forecasts, quantified financial benefits statements, asset valuations and partial offers. The checklist and forms must be completed and signed by the financial adviser to the Bidder or Target, as appropriate.

France

The market has been quite active in France in recent months and the number and size of public takeovers are on the rise. Recent trends however suggest that public takeovers are increasingly subject to challenge or litigation.

The so-called Loi Florange, introduced a few years ago, was expected to bring change to the way public takeovers are conducted in France. With hindsight, it seems that has not actually happened. The stated intention of the law was to "protect" French companies by making hostile takeovers more difficult and allowing the target to frustrate the offer. The law made it easier for long-term shareholders (holding shares for more than two years) to be afforded double voting rights, to favour stability. It introduced – as is the case in the UK– a mandatory 50% acceptance condition for all takeovers, to prevent a bidder from taking de facto control after a failed bid which would otherwise result in the bidder obtaining a material interest in the target. The workers council of the target was also given enhanced rights to review and discuss the intentions of the bidder. A few years on, the new anti-takeover arsenal does not appear to have actually deterred anyone, nor has it increased the scope for litigation. As before, a handful of hostile bids have been launched: some have succeeded (Gameloft was acquired by Vivendi), others have failed (Gecina's unsolicited offer to buy Foncière de Paris lost out to a bidder recommended by the board of the target).

However, public M&A transactions seem to be under an enhanced scrutiny from the market and from the regulator. Activist shareholders of Safran were able to force it to reduce the price it agreed to pay for the acquisition of Zodiac Aerospace in a friendly deal negotiated between the two companies. That resulted in a rather unusual situation where, once the agreed price was publicly disclosed, it was challenged and eventually reduced. In the bid for Foncière de Paris, competing bidder Gecina (unsuccessfully) challenged in Court the offer made by Eurosic, arguing that pre-offer undertakings given by certain target shareholder to tender their shares had not been properly characterized and disclosed. In the offer for Gameloft, the target company itself started judicial proceedings against the bid, alleging that it was in contradiction with the bidder's previous public statements. In another case, it was the market regulator that blocked a public bid, arguing that the financial implications of intra-group transactions between bidder Altice and target SFR had not been adequately described in the offering document.

Conflicts of interest (actual or alleged) is an increasingly sensitive topic and an obvious path for anyone (shareholders, interlopers, etc.) seeking to challenge the deal. Usually in a friendly deal, conflicts of interest are addressed by resorting to a third party expert providing a fairness opinion. But sometimes this is not enough to allay concerns regarding the fairness of the deal. In the Fosun/Club Med case, for example, the plaintiffs sought to challenge the expert itself, arguing that it was not truly independent from the parties.

More than ever, bidder and target need to prepare carefully to make the deal a success.

Germany

There have been minor amendments to the German Securities Acquisition and Takeover Act (Wertpapiererwerbs und Übernahmegesetz, Takeover Act) since January 2016.

In July 2016, the First Financial Market Amendment Act (Erstes Finanzmarktnovellierungsgesetz, 1. FiMaNoG) came into force which amended the Takeover Act to take into account updates to the German Securities Trading Act (WpHG) and the European Market Abuse Regulation (Regulation (EU) No. 596/2014).

The Second Financial Market Amendment Act (Zweites Finanzmarktnovellierungsgesetz, 2. FiMaNoG) is set to come into force on 3 January 2018 and will introduce a scale for fines for breach of the Takeover Act based on the seriousness of the infringement. Under the new system, natural persons will face fines of up to (i) EUR 5 million, (ii) EUR 2.5 million or (iii) EUR 1 million, depending on the nature of the infringement. Legal entities will face fines of up to (i) the higher of EUR 10 million and 5 percent of the group turnover, (ii) the higher of EUR 5 million and 2% of the group turnover, or (iii) EUR 2 million, depending on the nature of the infringement.

Hong Kong

In January 2018, the Hong Kong Securities and Futures Commission (the "SFC") launched a three-month consultation on a wide range of proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (the "Codes"), amongst which key proposals include:

- raising the independent shareholders' voting approval threshold for all whitewash transactions (i.e. transactions with an issue of new securities as consideration for an acquisition, a cash subscription or the taking of a scrip dividend and where the SFC may waive a general offer if there is independent shareholders approval) from simple majority to 75 percent;
- imposing additional exit requirements for privatisation of Mainland China companies (or companies incorporated in any other jurisdiction that does not afford compulsory acquisition rights) listed in Hong Kong so that any such delisting resolution should be made subject to the offeror receiving 90 percent acceptances from independent shareholders; and
- empowering the Takeovers Panel (the "Panel") to require compensation to be paid to shareholders who have suffered as a result of a breach of the Codes.

The other proposed amendments in the consultation include:

- clarifying SFC's and the Panel's existing power to make compliance rulings as pre-emptive measures restraining a person from acting (or continuing to act) a particular thing if the SFC or the Panel is satisfied that there is a breach or a reasonable likelihood of a breach of the Codes;
- requiring persons dealing with SFC, the Panel and the Takeovers Appeal Committee in all Codes transactions to give prompt cooperation and assistance and the provision of true, accurate and complete information; and
- allowing historical financial statements of Hong Kong-listed companies to be incorporated by reference in the offer documents/offeree board circulars issued pursuant to the requirements under the Codes, instead of reproducing the same information.

	Applicable
	US	UK
Applicable takeover regime and regulator	Generally, three sources of law are applicable to US public company M&A transactions: • Securities Exchange Act of 1934 and Securities Act of 1933: – Federal statute and regulations administered by the Securities and Exchange Commission (SEC). – Statutes and regulations govern, among other things, conduct of tender offers for securities and solicitations of proxies for shareholder votes to approve mergers as well as registrations of securities for M&A transactions where stock consideration is paid. • Corporate law of states of incorporation of parties (e.g. Delaware General Corporation Law) governs internal affairs of parties. • Listing rules of stock exchanges on which the securities of the Target, and to the extent applicable, the Bidder, are listed.	• City Code on Takeovers and Mergers: – Statutory rules administered by the Takeover Panel. – Shapes the form, structure and timetable of public takeovers in the UK, Channel Islands and Isle of Man. – 38 rules, 6 general principles. – Parties are expected to follow the spirit as well as the letter of the City Code. • Offers which are subject to the City Code are supervised by the Takeover Panel. • Applies to offers for companies with registered offices in the UK, Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market or multilateral trading facility in those jurisdictions (e.g. the Main Market of the London Stock Exchange or AIM). • Companies with securities admitted to trading on an EEA regulated market (but not a UK regulated market) are subject to rules on shared jurisdiction to determine which country's rules and regulator govern the transaction. • Companies with securities admitted to trading on a public market other than a company referred to above (e.g. NYSE) will only be subject to the City Code if the Panel considers the relevant company has its "place of central management and control" in the UK, Channel Islands or the Isle of Man.

licable Regime

Regime		
France	Germany	Hong Kong
• European Takeover Directive (2004/24/EC), as implemented into French law. • Code de commerce: – Voting rights, disclosure obligation, thresholds and takeover defence. • Code monétaire et financier: – Type of voluntary offers, mandatory offers, squeeze-out and approval of offer document. – Regulated and enforced by the securities market authority Autorité des marchés financiers (AMF). • AMF General Regulation: – Statutory set of rules administered by the AMF that set the form, structure and timetable of takeovers and the key obligations of participants in a public takeover. • Applies to offers for companies listed in France having their registered office in France. • May also apply (i) under certain conditions to companies having their registered office in the EU if they are not listed in their own jurisdiction and (ii) to companies having their registered office outside of the EU (except rules relating mandatory bid and squeeze-out).	• European Takeover Directive (2004/24/EC), as implemented into German law. • Offers which are subject to the Takeover Act are supervised by the German Financial Services Supervisory Authority (BaFin). • German Securities Acquisition and Takeover Act (Takeover Act): – Applies to offers for shares listed on a regulated market, but not for shares traded on unregulated markets, such as the Entry Standard segment of the Frankfurt stock exchange. – Applies to public offers for German targets whose shares are listed in Germany. Parts of the Takeover Act apply to offers for non-German companies that are listed in Germany and other parts apply to offers for German companies listed on a stock exchange within the EU or the EEA. – Regulation on the Content of the Offer Document, the Purchase Price in case of Takeover Offers and Mandatory Offers and the exemption from the obligation on Publication and Issuance of an Offer (Takeover Offer Regulation)	• Code on Takeovers and Mergers: – Non-statutory rules issued and administrated by the Securities and Futures Commission (SFC). – Does not have the force of law. – Shapes the form, structure and timetable of takeovers in Hong Kong. – 36 rules, 10 general principles. – Parties are expected to follow the spirit as well as the letter of the Code. • Offers which are subject to the Code are supervised by the Takeovers and Mergers Panel. • Applies to takeovers and mergers affecting public companies in Hong Kong, companies with a primary listing of their equity securities in Hong Kong and Real Estate Investment Trusts (REITs) with a primary listing of their units in Hong Kong. • SFC may consider that a company neither incorporated in Hong Kong nor listed on the Hong Kong stock exchange to be a "public company in Hong Kong". The SFC will consider all circumstances and will apply an economic or commercial test, taking into account primarily the number of Hong Kong shareholders and the extent of share trading in Hong Kong, and other factors such as: (a) location of head office and place of central management, (b) location of business and assets, (c) the existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers and mergers outside Hong Kong.

Applicable		
	US	UK
Sanctions for non-compliance	• Civil and criminal penalties or injunctive relief, and can affect timing and ability to complete transaction.	• Sanction by the Takeover Panel, the UK's Financial Conduct Authority (FCA) and other regulatory bodies. • Takeover Panel may also impose a "cold-shouldering" sanction whereby other market participants and professionals are required not to deal with or act for the person subject to the sanction.

licable Regime

Regime		
France	Germany	Hong Kong
• (i) Fines, injunctions and other measures taken by the AMF; and (ii) civil and criminal sanctions imposed by courts.	• Fines, prohibition of the offer and other measures taken by the BaFin; civil and criminal sanctions imposed by courts. • If a mandatory bid is not made, the following principles apply additionally: – Bidder's rights resulting from the shares in the Target are suspended as long as the obligation is not fulfilled. – Outstanding shareholders cannot enforce the obligation to make a mandatory bid. – If a mandatory bid is delayed, the Bidder has to pay interests in the amount of five percent above the relevant base interest rate on the offer consideration from the date the Bidder first had to make a mandatory bid.	• Sanctions by the Takeovers and Mergers Panel. • Takeovers and Mergers Panel may issue a public statement which involves criticism, impose public censure, require licensed corporations, registered institutions or relevant individual not to act in a stated capacity for which he has failed to comply, or ban advisers from appearing before the SFC for a stated period.

	Applicable	
	US	UK
Deal protection/ defensive measures	• Traditional business judgment rule under the law of the state of incorporation of the corporation is the basic standard of judicial inquiry with respect to directors' decisions. • For Delaware corporations: – Where the Target pursues a transaction that will result in a change of control, the so- called "Revlon duties" would be applicable and would require the Target directors to obtain the highest price reasonably achievable. – In addition, defensive measures adopted by the Target board to thwart a potential takeover would be subject to an enhanced level of scrutiny under the "Unocal" doctrine which requires that a threat to the Target be reasonably perceived by its board of directors and that the defensive actions taken by the Target in response to that threat be proportionate to the threat.	• Takeover Code prohibits (subject to certain exceptions) the Bidder or any concert party entering into offer related arrangements, including: – inducement fees; – exclusivity arrangements; and – matching/topping rights. • Takeover Code prohibits Targets from taking any "frustrating action" which seeks to reduce the value of the Target through certain corporate transactions (e.g. a disposal of material assets).

licable Regime

e Regime		
France	Germany	Hong Kong
• Pre-bid arrangements providing an undertaking to tender shares under the offer are valid in principle, but constrained by the overarching principle of "freedom of competing offers". In practice, the seller must be given the ability to walk away (eventually subject to a nominal break fee) if there is a better bid available. • Inducement fees are not permitted (the fee would automatically be added to the price to be offered to all shareholders). • With the Loi Florange passed in 2014, the board of the Target is now entitled to take any action to frustrate the bid, subject only to general fiduciary considerations (intérêt social). In particular, the Target could decide to implement a major disposal or a major acquisition during the offer period, or, provided it has the requisite corporate authority for doing so, issue shares on a non pre-emptive basis. France thus is opting out from the provisions of Article 9 of the Takeover Directive (as permitted under Article 12 of the Directive).	• Pre-bid arrangements providing an undertaking to tender shares under the offer are valid. • The management board of the Target must not take actions that may prevent the offer's success. However, this prohibition does not apply to: – actions that a prudent and conscientious manager of a company not subject to a takeover offer would have taken; – a search for a competing bidder; – actions approved by the supervisory board of the Target; and – actions based on an authorization of the shareholders' resolution that have been approved by the supervisory board. • Bidder is prohibited from granting unjustified benefits to the board members of the Target in connection with the offer. • Break-up fees must comply with provisions of the German Stock Corporation Act, which limit payments to shareholders, and with the above mentioned principles. In any event, the break-up fee must be appropriate. However, also because of the aforementioned uncertainties, break-up fees are not as common in Germany as they are in other jurisdictions.	• Bidder may approach up to 6 sophisticated investors who have a controlling shareholding to obtain an irrevocable commitment to accept the offer within 1 day (or 2 days if they are overseas) before an announcement of a firm intention to make an offer is published. The SFC should be consulted at the earliest opportunity. • Inducement or break fee must be de minimis (normally no more than 1% of offer value). • The Target company's board and its financial adviser must confirm to the SFC that the fee is in the best interests of the shareholders. • Code on Takeovers Code and Mergers prohibits the target company from taking any "frustrating action" which may reduce the value of the target company through certain corporation action (e.g., a disposal of material assets), except with the approval of shareholders in a general meeting or with a waiver granted by the SFC.

	Cond	
	US	UK
Due diligence	• State contract and corporation law principles apply. Typically, parties enter into a confidentiality agreement to facilitate the disclosure of non-public information. Confidentiality agreements often have a "standstill" provision, which prevents the Bidder from making an offer to acquire the Target or take other actions to control the Target without the consent of the Target board.	• Rule 21.3 states that any information disclosed by the Target to a potential Bidder must on request also be given to any other bona fide potential Bidder.
Funding	• Disclosure of material funding arrangements required in SEC filings. • Though not common, there is no legal prohibition on a financing condition; however, financing conditions are required to be disclosed in SEC filings. • If material, financial statements for the Bidder must be furnished to show the Bidder's financial capacity to complete the transaction.	• No financing condition is permitted (save in unusual circumstances). • Upon the announcement of a firm intention to make an offer for the Target, the Bidder's bank or financial adviser must confirm the existence of financial resources to satisfy any cash payable by the Bidder pursuant to the offer – i.e., certain funds need to be in place upfront.

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France	Germany	Hong Kong
• AMF has issued rules aiming to restrict the ability of a company to allow a potential Bidder to carry out due diligence to situations where a confidentiality agreement has been signed and the potential Bidder has confirmed a genuine interest ("intérêt sérieux") in implementing the contemplated transaction. • AMF takes the view that information disclosed to a potential Bidder must on request also be given to any other bona fide potential Bidder.	• The management board of a Target company can allow a due diligence without breaching its confidentiality obligations, if a Bidder is seriously interested in an acquisition, the acquisition is in the best interest of the Target and the Bidder agrees to keep the information obtained in the due diligence confidential. • Therefore, Target companies normally require Bidders to enter into a confidentiality agreement and, additionally, a letter of intent, in order to be able to demonstrate that the Bidder is seriously interested in the acquisition, before due diligence starts. • If the management board of the Target company allowed one Bidder to conduct a due diligence, it must provide the same infor-mation also to a competing Bidder provided that the competing bid is in the best interest of the Target. The management board may only disclose information, if the competing Bidder also demonstrates that he is seriously interested in the acquisition by entering into a confidentiality agreement and a letter of intent.	• Rule 6 states that any information, including particulars of shareholders, given to one Bidder or potential Bidder, whether named or unnamed, must, on request, be provided equally and promptly to another Bidder or bona fide potential Bidder, even if that other Bidder is less welcome.
• No financing condition is permitted. • The offer must be filed with the AMF and guaranteed by a "presenting bank" (a financial services provider licensed for underwriting), such that, if the Bidder defaulted, the bank would have to step in and pay the consideration to accepting shareholders.	• Together with the offer document, the Bidder must file with the BaFin a bank confirmation for the payment of the purchase price for all shares not yet owned by the Bidder. Under the bank confirmation, if the Bidder defaulted, the bank would have to step in and pay the consideration to accepting shareholders. • In the offer document, the Bidder must describe how it finances the offer, i.e., from its own cash reserves, by a bank financing, or by any other means.	• Disclosure of funding arrangements is required, and the financial adviser to the Bidder shall confirm that resources available to the Bidder are sufficient to satisfy the purchase of the shares which give rise to the offer obligations and to fully implement the offer.

	Cond	
	US	UK
Conditions	• Disclosure of conditions to the closing of a tender offer or merger is required in SEC filings. • For tender offers, the closing condition for the amount of stock tendered is typically the minimum number of shares required under applicable state law and the Target 's charter to ensure that after the closing of the tender offer, a second-step merger can be effected to squeeze out any remaining shareholders.	• Offers must be conditional on the Bidder acquiring or agreeing to acquire (pursuant to the offer or otherwise) shares carrying over 50% of the voting rights in the Target. • Conditions must not normally depend on subjective judgements. • Pre-conditions are permitted only in limited circumstances.
Mandatory bids	• No equivalent.	• Any person (or persons acting in concert) crossing 30% or more of the voting rights must make a mandatory bid.

uct		
France	Germany	Hong Kong
• The bid must be unconditional and can only be withdrawn in limited cases. • Mandatory minimum acceptance threshold: 50% (new mandatory condition introduced by the Loi Florange in 2014). If the offer is a mandatory bid and the Bidder fails to reach 50%, its voting rights (attached to shares held or acquired before the offer) will be capped at the relevant threshold triggering the mandatory bid (e.g., 30%). • Share-for-share offers may be conditional upon shareholder approval of the Bidder (if needed as a matter of company law in order to issue the new shares). • Voluntary public offer can be made conditional upon: – phase I anti-trust clearance (EU or US); – voluntary acceptance threshold (i.e., in excess of 50%); – the outcome of a public tender made by the same Bidder relating to some other Target. • A tender offer can be withdrawn by the Bidder: – if a competing offer is made; – frustrating action: with AMF consent, if the Target alters its substance (e.g., sells the crown jewels) or takes measures to dilute the Bidder or increase the cost of the offer (poison pills/rights plan, etc.).	• Mandatory bids must be unconditional. • Voluntary takeover offers can be subject to conditions, provided that the fulfillment of these conditions is outside the influence of the bidder; e.g.: – minimum acceptance rate (75% etc.); – anti-trust clearance. • Bidders cannot withdraw from offers.	• An offer must not normally be made subject to conditions which depend on judgments by the Bidder or the fulfillment of which is in its hands. • To invoke a condition, the Bidder must demonstrate that the circumstances which give rise to the right to invoke the condition are of material significance to the Bidder in the context of the offer. • Pre-conditions to making an offer are permitted, and such pre-conditions may be subjective, but it must be made clear in the announcement on whether such pre-conditions are waivable or not. The SFC must be consulted in the above case.
• Any person (or persons acting in concert) crossing 30% (share capital or voting rights) must make a mandatory bid. • Any person (or persons acting in concert) holding between 30% and 50% (share capital or voting rights) increasing its holding by 1% or more over a twelve-month rolling period must make a mandatory bid.	• Any person (or persons acting in concert) crossing 30% of the voting rights must make a mandatory bid.	• Similar to the UK save that the creeping acquisition rule still applies (allows purchases of an additional 2% within a 12-month period).

	Cond	
	US	UK
Equality of treatment	• "All holders rule": a tender offer must be open to all holders of the same class of securities • No equivalent for one-step mergers.	• General principle: all shareholders of a Target company must be afforded equivalent treatment. Special deals with favourable conditions for certain shareholders are generally not permitted.
Offer Price	• "Best price rule": the consideration (cash or stock or combination) paid to any shareholder for securities tendered in a tender offer must be the highest consideration paid to any other shareholder. • The best price rule does not factor in employee compensation, severance or other employment benefit arrangement if such arrangements are approved by the compensation or similar committee of either the Target or the Bidder (if the Bidder is a party to the arrangement).	• No less favourable terms than highest price paid by the Bidder or its concert parties during the offer period and the three months prior to the start of the offer period. • Cash or cash alternative must be made available if interests in shares carry 10% or more of the voting rights acquired during the offer period and within 12 months of the start of the offer period.

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France	Germany	Hong Kong
• General principle. all shareholders (and all holders of equity securities) must be offered identical financial terms for their shares (and equity securities).	• General principle: obligation of the bidder to treat all Target shareholders of the same class equally.	• General principle: all shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.
• In general, the Bidder can set the price/ consideration offered as it deems fit. • There are rules however in situations where the Bidder is a controlling shareholder (in relation to a so-called "simplified procedure") or in the event of a mandatory bid or of a squeeze-out: – In an offer made by a majority shareholder, the price in principle cannot be less than the market price (VWAP) during the 60 trading days before the offer, – In a mandatory bid, the price in principle cannot be less than the price paid by the Bidder in the past 12 months. • The consideration offered must include a cash alternative if the Bidder offers securities that are not in the EU), or if the Bidder has acquired and paid in cash more than 20% (share capital or voting rights) in the past 12 months.	• The Takeover Act contains rules on minimum prices which must be paid in the offer. • The consideration to be paid by the bidder must at least be the higher of: – the average weighted stock exchange price of the shares of the Target during the three months prior to the publication of (i) the decision to issue a voluntary takeover offer, or, (ii) in case of a mandatory bid, the acquisition of control (30% of the voting rights); and – the highest consideration paid or agreed upon by the Bidder, or any entity related to the Bidder or acting jointly with the Bidder for the acquisition of shares of the Target, during the six months prior to the publication of the offer document.	• If the Bidder and/or its concert parties purchase shares in the Target company, (i) within 3 months before the start of the offer period; or (ii) during the offer period; or (iii) prior to the 3 month period referred to in (i) if the SFC considers it necessary to give effect to the principle of equality of treatment; the offer must be on no less favourable terms than those applying to such purchase. • The offer shall be made in cash or accompanied by a cash alternative if the Bidder and/or its concert parties purchase shares by cash in the Target company carrying 10% or more of the voting rights during the offer period and within 6 months before the start of the offer period. The cash offer must also be on no less favourable terms than the highest price paid by the bidder and/or its concert parties in such purchase.

	Cond	
	US	UK
Acting in concert	• Any person (or groups of persons acting together) acquiring beneficial ownership of 5% of any class of a Target's registered equity securities in order to change or influence the control of the Target must file within 10 days of such acquisition a Schedule 13D, which requires, among other things, disclosure of the identity and background of each member of the group, the relationships of the members to each other and any arrangements that the members have with respect to the Target's securities. • Co - Bidders are joint Bidders (including controlling persons of any Bidder) in a tender offer and must jointly file Schedule TO with the SEC.	• "Concert parties" are persons who co-operate with a Bidder pursuant to an agreement or understanding, whether formal or informal, to obtain or consolidate control of the Target or to frustrate the outcome of a bid. • Affiliated persons deemed to be acting in concert. • Takeover Code rules which regulate the conduct of Bidder also apply to concert parties.

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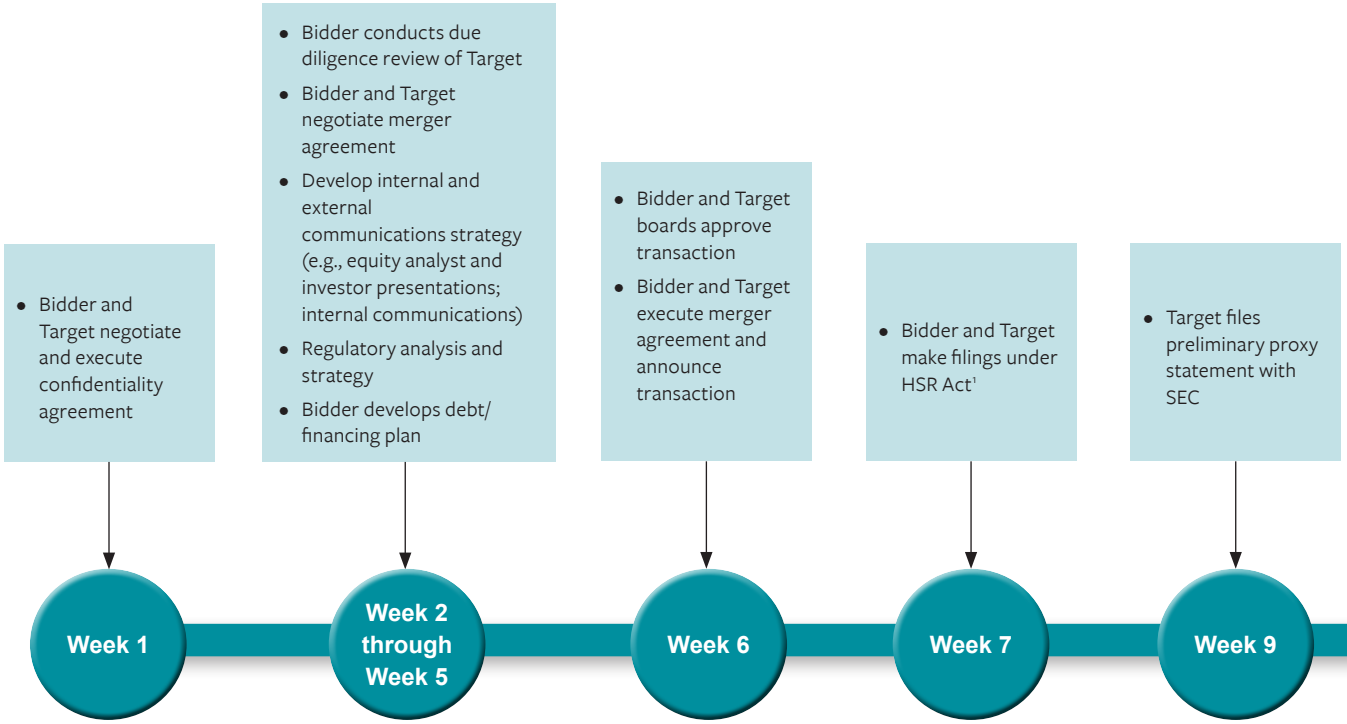
France	Germany	Hong Kong
• Combination of persons who co-operate pursuant to an agreement (whether formal or informal) to buy or sell or exercise voting rights in order to implement a common policy in relation to a company or obtain control of a company. (Article L. 233-10 of the Code de commerce). Affiliated persons (parent/subsidiary, etc.) are deemed to be acting in concert. • In the context of a tender offer, the definition extends to persons who have an agreement with the Bidder to obtain control of the Target, and those who have an agreement with the Target to frustrate the offer. (Article L. 233-10-1 of the Code de commerce). • Shareholdings of parties acting in concert are aggregated and persons acting in concert are jointly and severally liable for the obligations imposed on them by law (disclosure obligations, obligation to make a mandatory bid, etc.).	• Voting rights held by parties acting in concert with the Bidder are aggregated in order to determine whether parties have acquired control (at least 30% of the voting rights) over the Target and must make a mandatory bid. • The Bidder and a third party acting in concert, if the Bidder or his subsidiary coordinates, on the basis of an agreement or in another manner, his conduct with such third party in respect of the Target; agreements in individual cases shall be excluded. Coordinated conduct requires that the bidder or his subsidiary and the third party reach a consensus on the exercise of voting rights or collaborate in another manner with the aim of bringing about a permanent and material change in the Target company's business strategy. • The Takeover Act additionally provides for the definition of "parties acting jointly with the bidder". This definition is used for example to determine the minimum offer price. The offer price shall not fall below the consideration paid by any party acting jointly with the bidder for the acquisition of Target shares during the last six months prior to the offer. Parties acting jointly with the Bidder are natural or legal persons who coordinate with the bidder, on the basis of an agreement or in another manner, their actions in respect of the acquisition of shares in the Target company or the exercise of voting rights attached to such shares.	• Combination of persons who actively co-operate to obtain or consolidate "control" of a company through acquisition of voting rights. • Certain classes of persons are presumed to be acting in concert with others in the same class unless the contrary is established. • Need to seek SFC's ruling to rebut any of the presumptions. • Shares owned by the Bidder and its concert parties will be treated as one block and subject to the same restrictions.

	US		UK		Fra
Structure	Tender Offer	Merger	Contractual Offer	Scheme of Arrangement	Tender Offer
	Two step: • In friendly transaction, Target and Bidder sign a merger agreement. • Bidder then makes tender offer directly to Target shareholders for Target shares. • Bidder and Target file various disclosure documents with SEC. • After tender offer closes, assuming Bidder owns at least 90% of Target (80% in some states), "short form" squeeze-out merger is effected immediately following close of tender offer, resulting in Bidder owning 100% of Target shares. Appraisal rights may apply. Top-up options (if available) and statutory provisions (e.g., Section 251(h) in Delaware) can facilitate the immediate closing of the merger at lower ownership thresholds; otherwise merger closes after approval at a shareholders meeting. • Two-step transaction may potentially result in shorter time to obtain control of the Target.	One step: • Target and Bidder sign a merger agreement. • Target files proxy statement with the SEC and holds shareholder meeting to approve the merger. Required approval percentage (e.g., majority of outstanding shares) is specified in applicable state statute and, if applicable, in Target charter. • Subject to shareholder approval and satisfaction of all other conditions, merger becomes effective and Bidder owns 100% of all Target shares. Appraisal rights may apply. • Generally, once shareholders approve the merger, the deal is no longer subject to a topping bid, even if all conditions to close (e.g., regulatory approvals) are not yet satisfied.	• 50%+ acceptance condition (but usually higher). • Possibility of minority remaining. • Potentially shorter time to obtain control. • No court sanction required. • Offer process controlled by Bidder. • Market purchases can increase chance of success.	• 75% approval by value and majority in number of s/holders present and voting. • Certainty of no minority remaining. • Can take time to obtain control and court timetable can be inflexible. • Court sanction required. • Scheme process controlled by Target. • Market purchases are of no effect.	• Public tender offer made to each shareholder. • 50%+ acceptance condition. • Possibility of minority remaining. • Potentially shorter time to obtain control – except if offer gives rise to litigation or if there is a competing bid.

ure					
ance	Germany		Hong Kong		
Statutory Merger	Tender Offer	Statutory Merger	General Offer	Scheme of Arrangement	
• Company law process (EGM). • Requires a 67% approval, by both sets of shareholders (Bidder and Target). • All or nothing. Certainty of no minority remaining. • Reduced scope for interloper or litigation with minority shareholders. • More complex. Requires thorough due diligence to ensure that all assets, contracts, licences etc. can properly be transferred to the surviving entity.	• Takeover offer directed at the acquisition of control (at least 30% of the voting rights in the Target). • Deal protection by irrevocable undertakings or separate share purchase agreements with key shareholders to be entered into before the offer is announced. • Cash offers are much more frequent in Germany than share offers and much simpler to implement. • Each Target shareholder decides about acceptance of the offer for itself. • Typically, minority shareholders remain in the Target. • Squeeze-out of minority shareholders requires majority of at least 90%; if the bidder holds between 90 and 95% of the Target shares, a squeeze-out of minority shareholders is only possible in connection with a merger of the Target on its shareholder. • In a squeeze-out, an adequate compensation must be paid to minority shareholders which is determined by a court appointed auditor and which often exceeds the offer price.	• Merger (within the meaning of statutory merger under German Transformation Act) of Target on the Bidder is possible if the Bidder is incorporated in Germany or another member state of the EU. • Merger requires approval of the general meeting of the Target with a majority of 75% of the votes cast. • The adequacy of the merger ratio must be confirmed by a court appointed auditor. • If the Bidder is not itself stock exchange listed on a regulated market in Germany, the Target shareholders must be offered an adequate cash compensation for their shares which is determined by a court appointed auditor. • The adequacy of the merger ratio and of the cash compensation can be challenged in court.	• General offer on all shares not owned by Bidder and its concert parties. • A minimum of 25% shareholding must be held in public hands if the Bidder intends to maintain the listed status of the target company. • The Bidder may seek to privatize the target company (i.e. obtain 100% interest in the target company) by means of exercising compulsory acquisition rights if acceptances of the offer and purchases of disinterested shares (i.e. shares not owned by the Bidder and/or its concert parties) made by the Bidder and its concert parties during the period of 4 months after posting the initial offer document total 90% of the disinterested shares. • Potentially shorter time to obtain control. • No court sanction required. • Offer process controlled by the Bidder.	• Used in the privatization of the target company (i.e. obtain 100% interest in the target company) • An arrangement with shareholders to cancel/transfer to the Bidder all outstanding shares. • Approved by at least 75% of votes of disinterested shares (i.e. shares not owned by the Bidder and/or its concert parties) at general meeting and no more than 10% of votes of disinterested shares cast against the scheme. • Less flexible and more cumbersome. • Court sanction required. • Scheme process controlled by the target company. • All or nothing deal.	

US - Cash Merger Ill

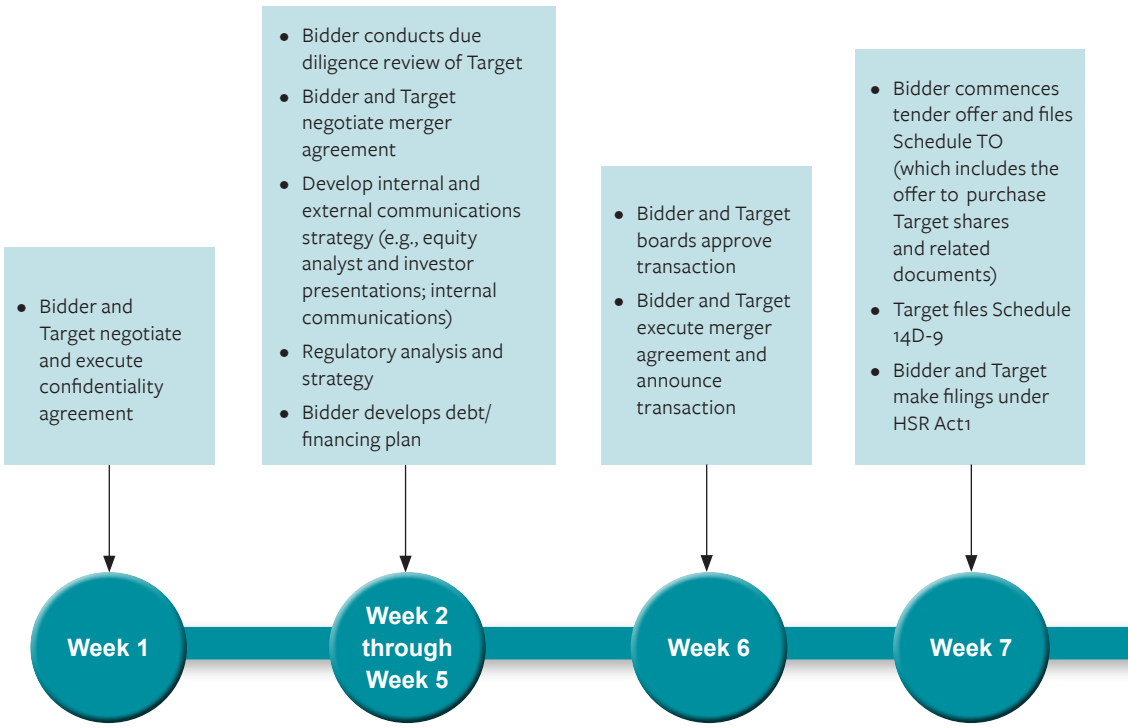


1 In the event that any non-U.S. antitrust approvals are required, this timeline would be modified accordingly.

2 Assuming a second request is not received, the HSR waiting period would expire 30 days after HSR filings are made.

3 In the event the SEC elects not to review the preliminary proxy statement, the timeline would be accelerated by approximately 3-5 weeks.

US - Cash Tender Offer (with Second



1 In the event that any non-U.S. antitrust approvals are required, this timeline would be modified accordingly.

2 Assuming a second request is not received, the HSR waiting period would expire 15 days after HSR filings are made.

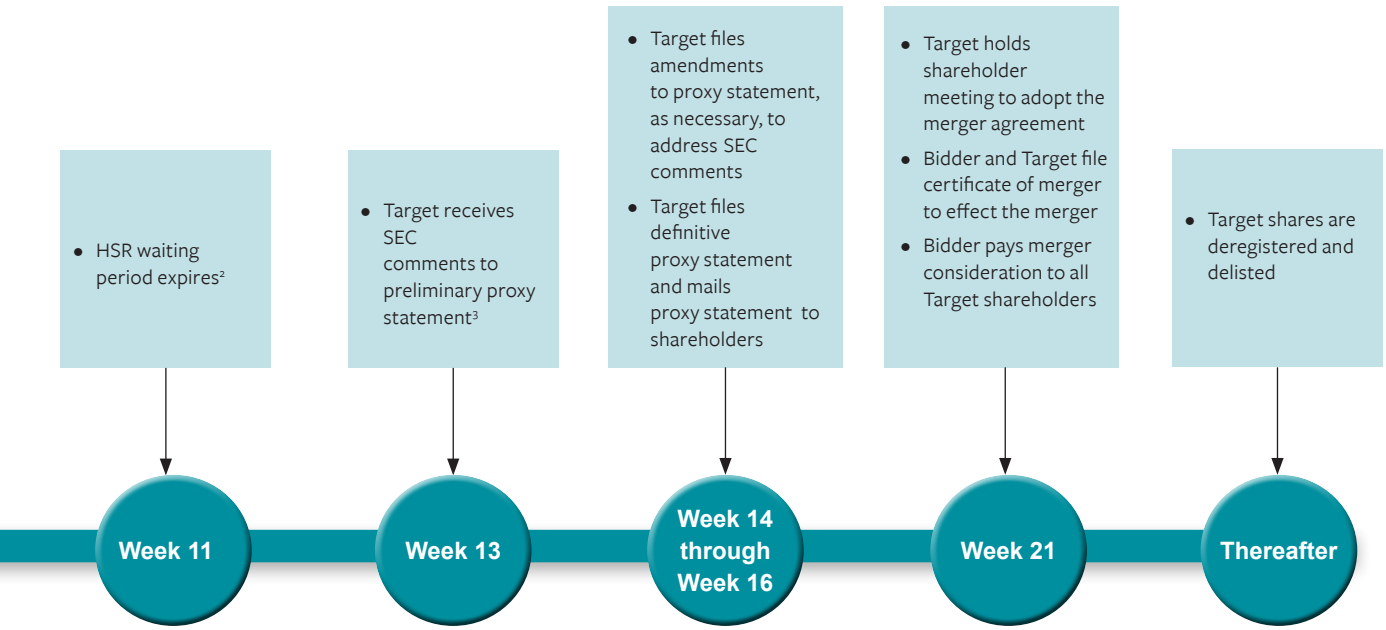
3 This timeline assumes that no material amendment is made to the offer. A material amendment might require that the offer period be extended.

4 The offer must remain open for a minimum of 20 business days.

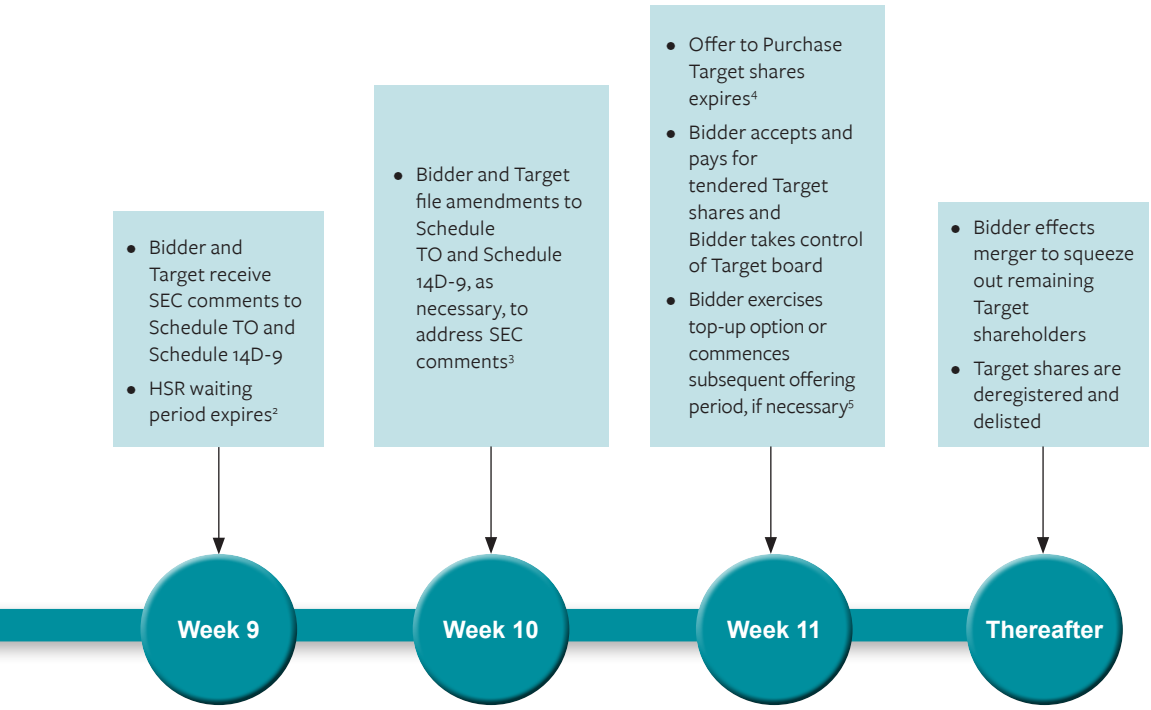
5 For Delaware Target corporations, a Section 251(h) second-step merger can be effected immediately following the consummation of the tender offer.

Timetables

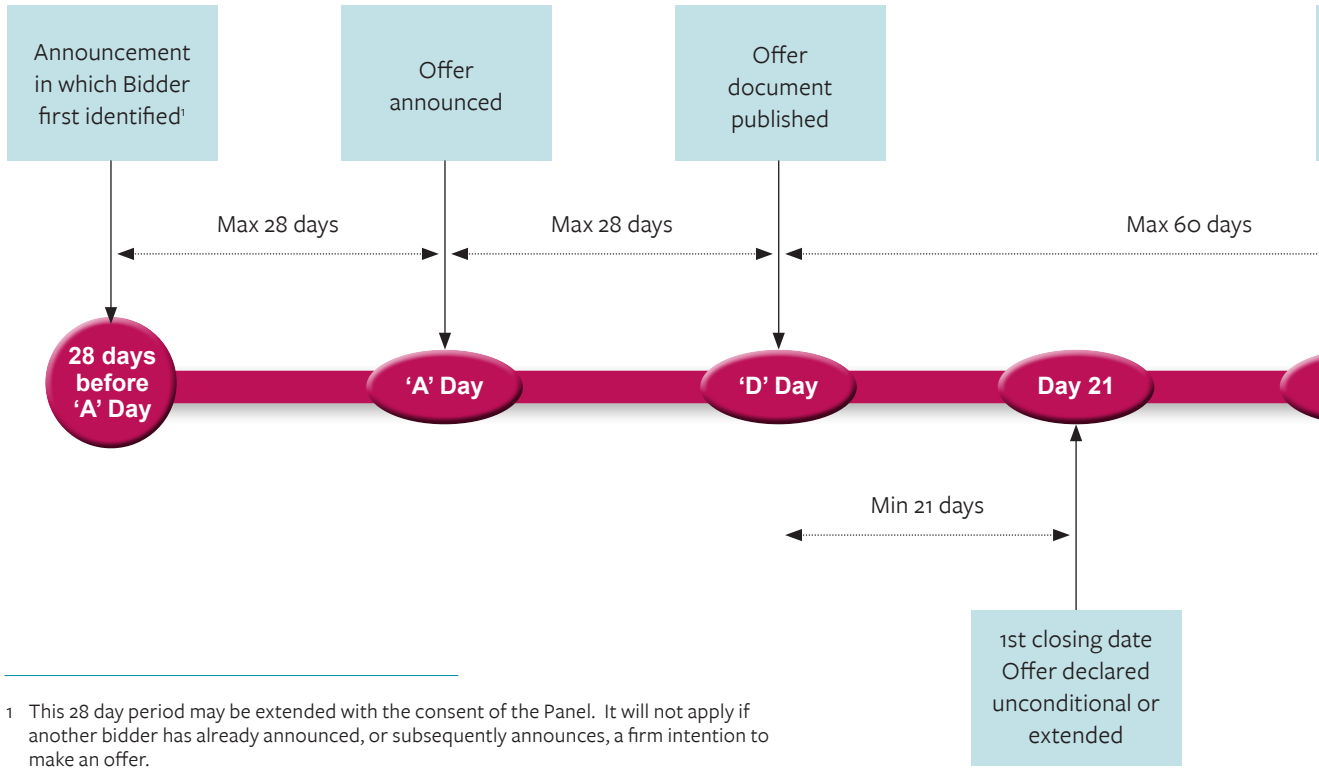
ustrative Timeline



d Step Merger) Illustrative Timeline

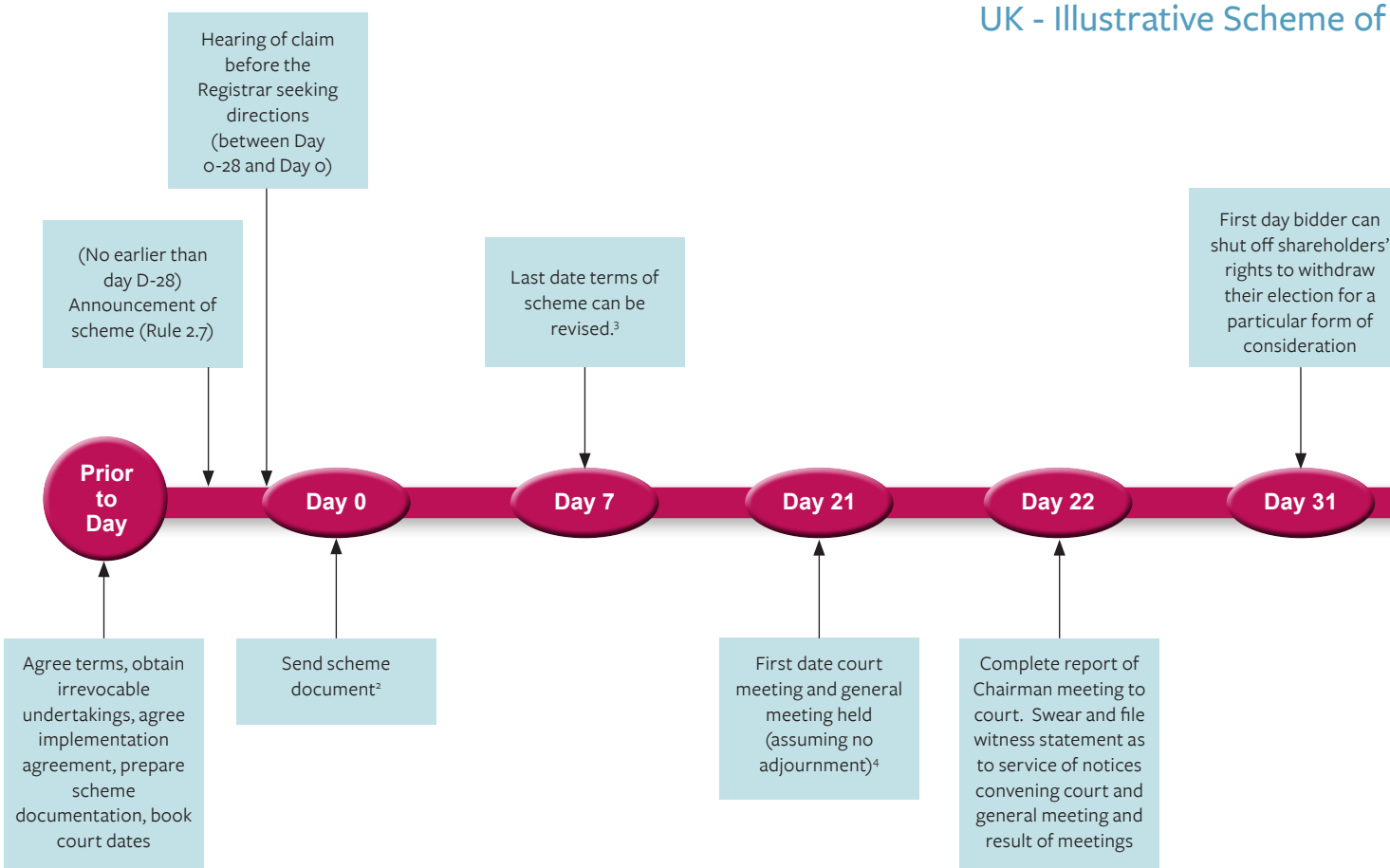


UK - Illustrative Takeo

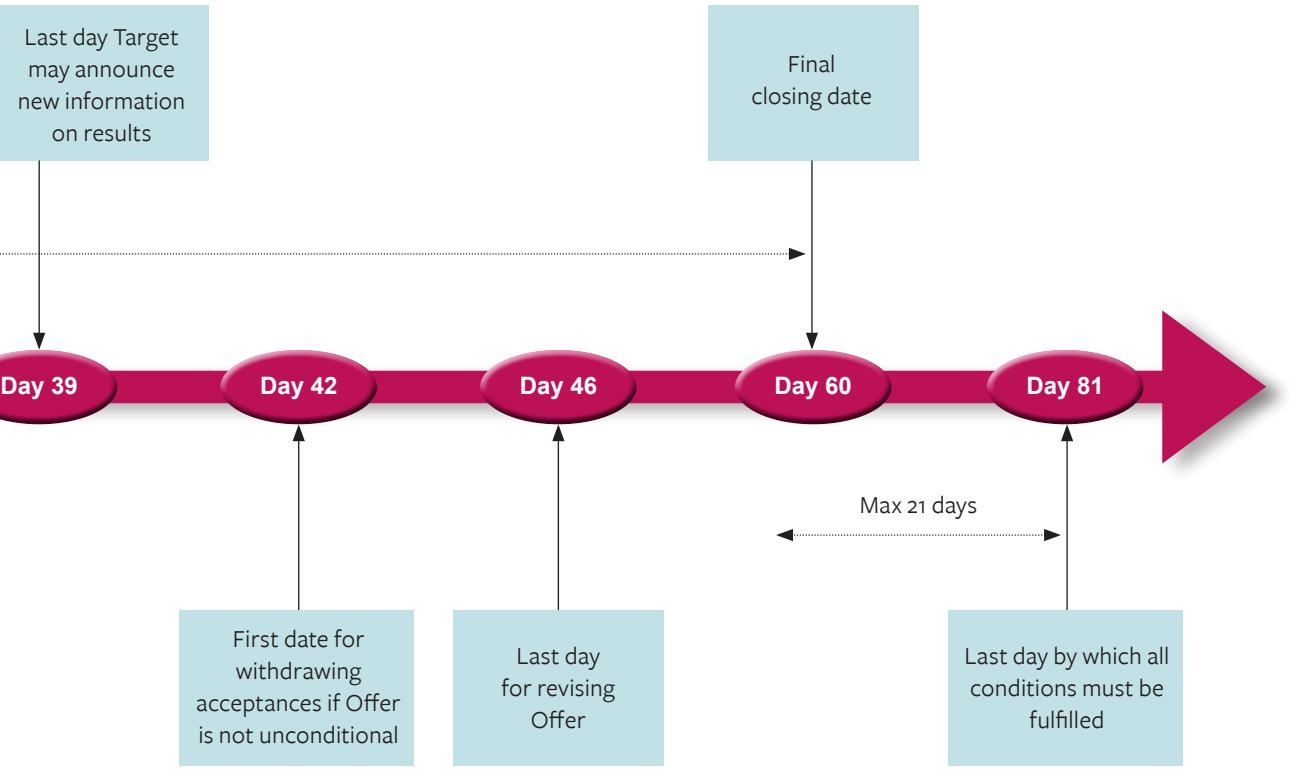


1 This 28 day period may be extended with the consent of the Panel. It will not apply if another bidder has already announced, or subsequently announces, a firm intention to make an offer.

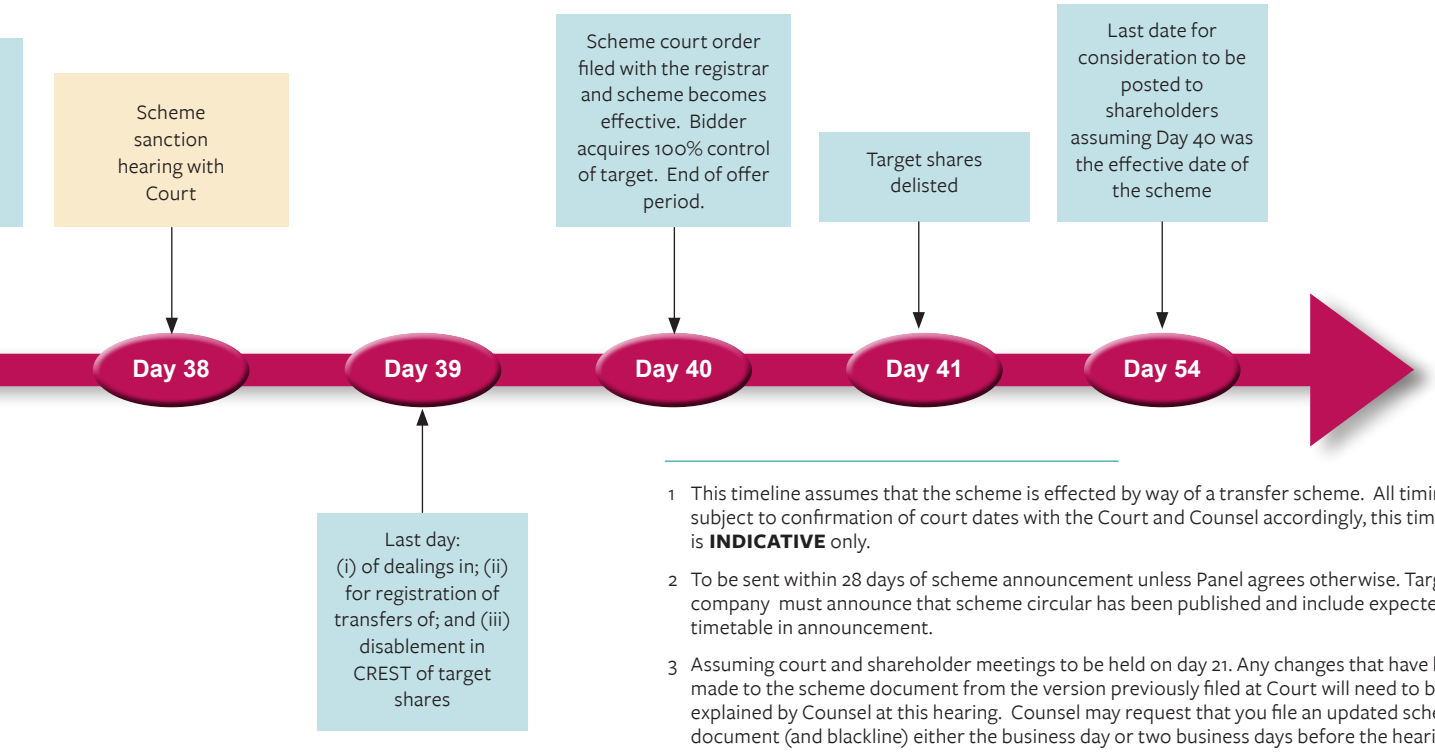
UK - Illustrative Scheme of



ver Offer Timetable



Arrangement Timetable[1]



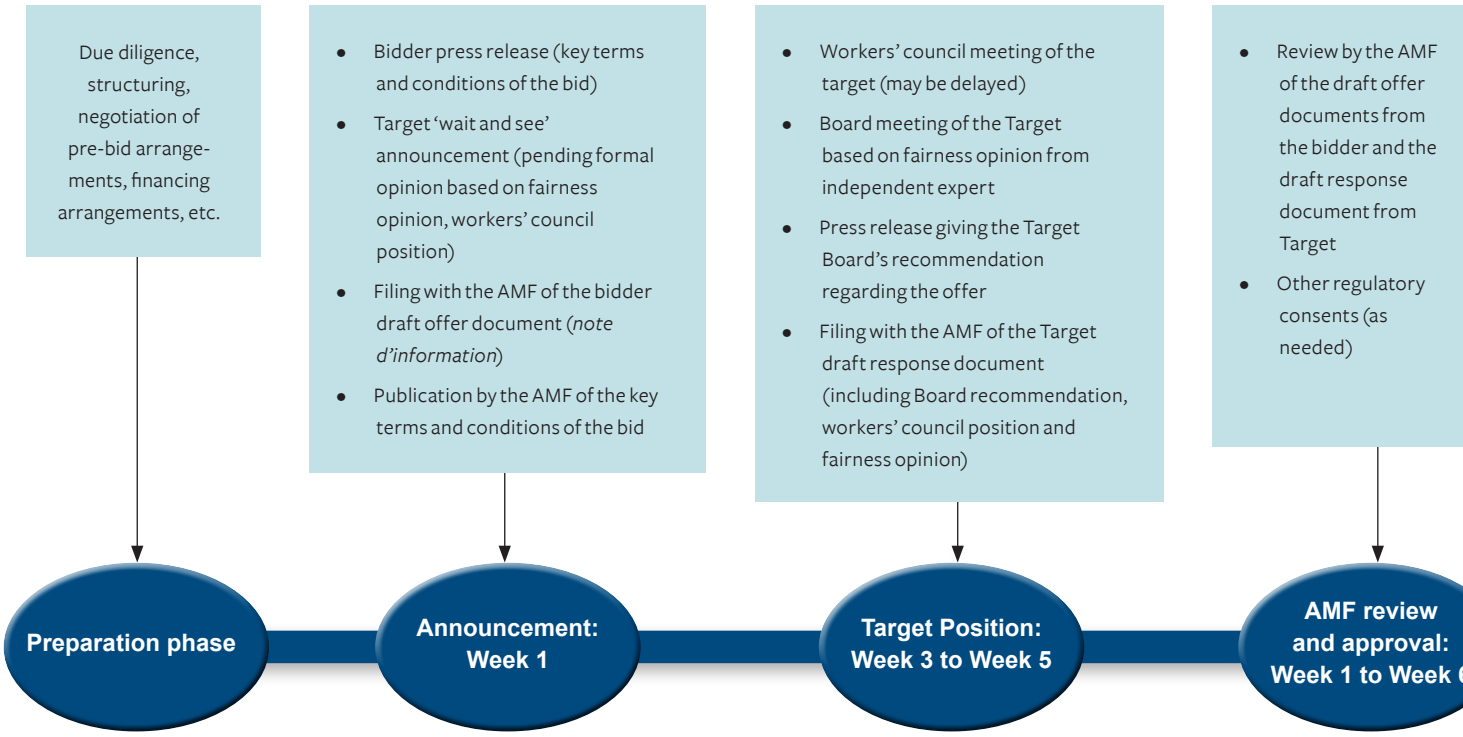
1 This timeline assumes that the scheme is effected by way of a transfer scheme. All timings are subject to confirmation of court dates with the Court and Counsel accordingly, this timetable is **INDICATIVE** only.

2 To be sent within 28 days of scheme announcement unless Panel agrees otherwise. Target company must announce that scheme circular has been published and include expected timetable in announcement.

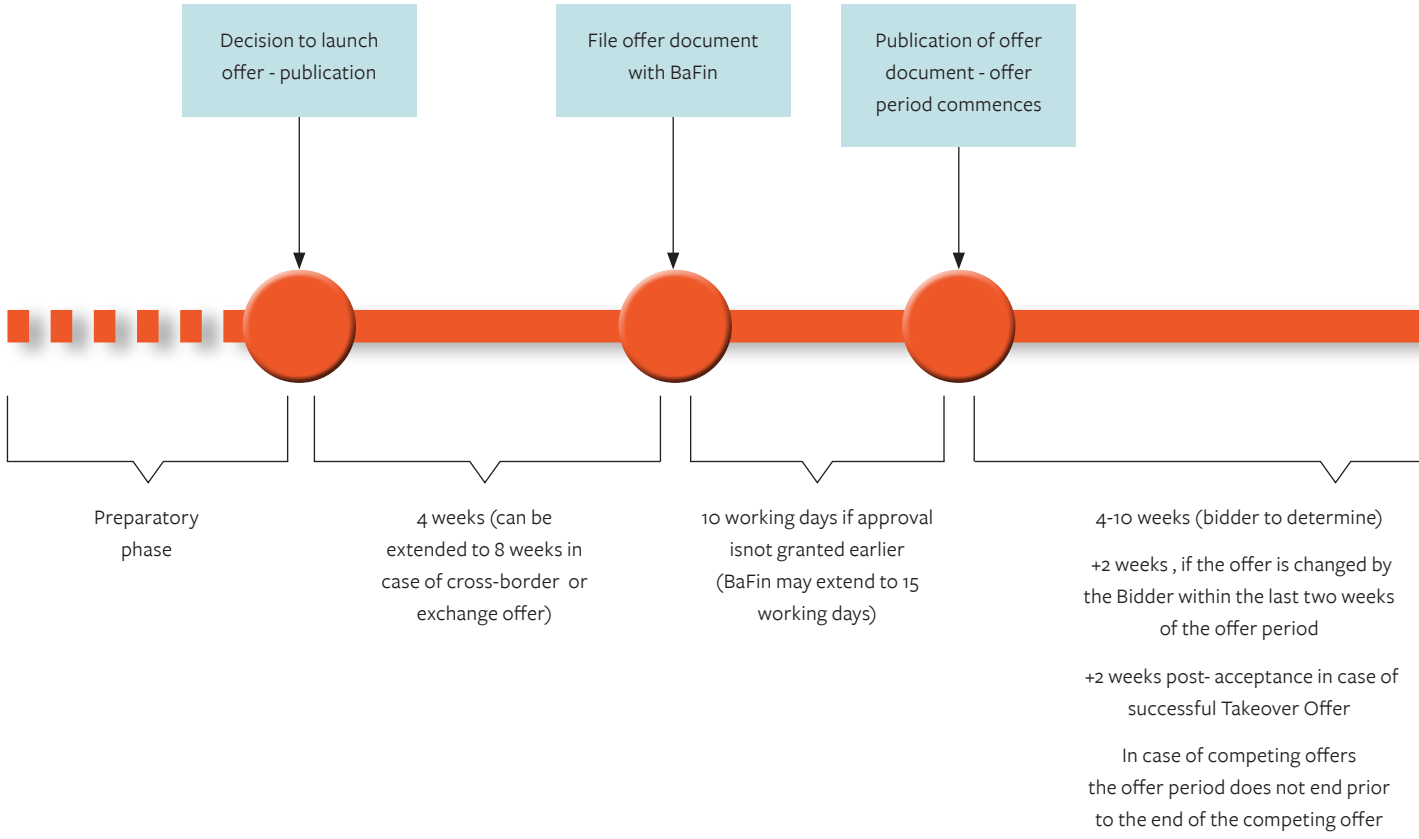
3 Assuming court and shareholder meetings to be held on day 21. Any changes that have been made to the scheme document from the version previously filed at Court will need to be explained by Counsel at this hearing. Counsel may request that you file an updated scheme document (and blackline) either the business day or two business days before the hearing so that the Court has it in advance of the hearing.

4 Meetings must be at least 21 days after date of scheme circular. Offeree must make an announcement as soon as practicable after the results of the meeting are known.

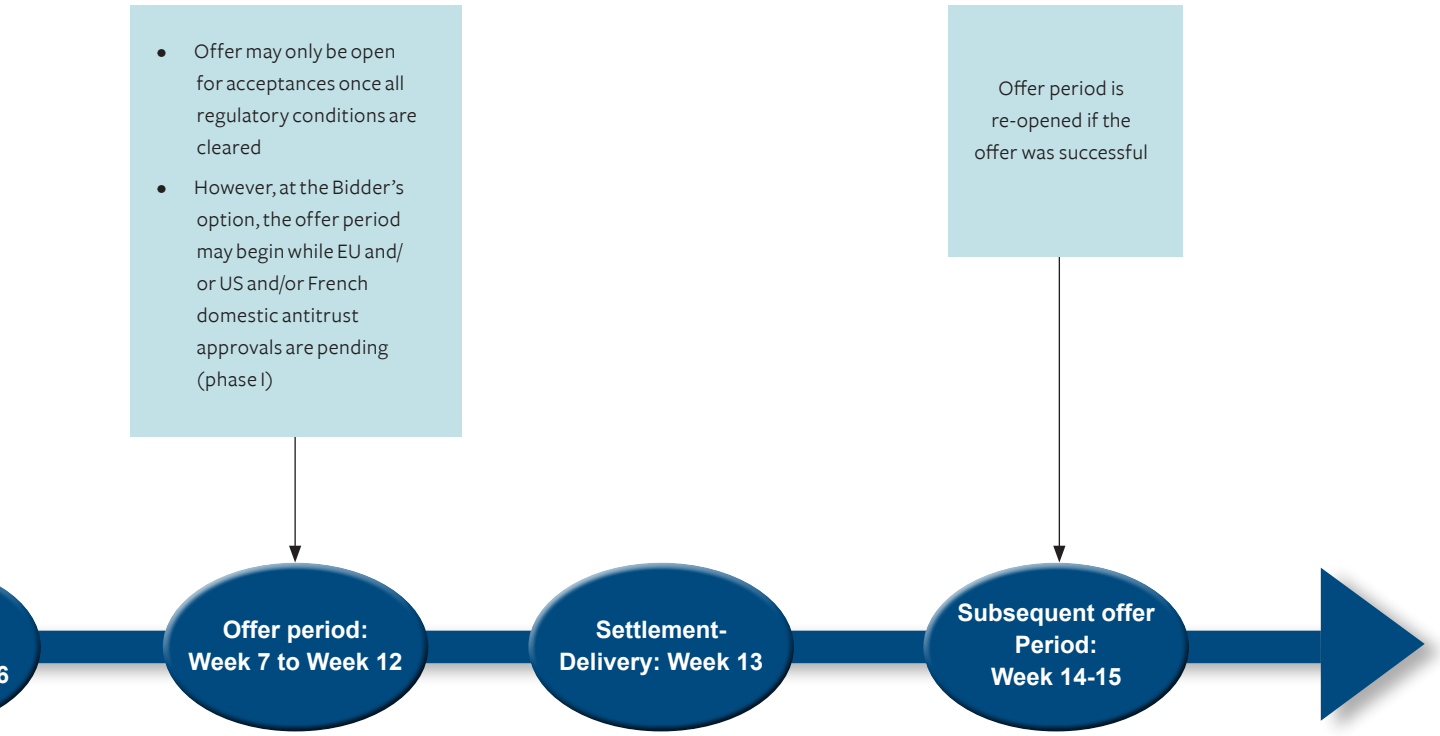
France - Illustrative Take



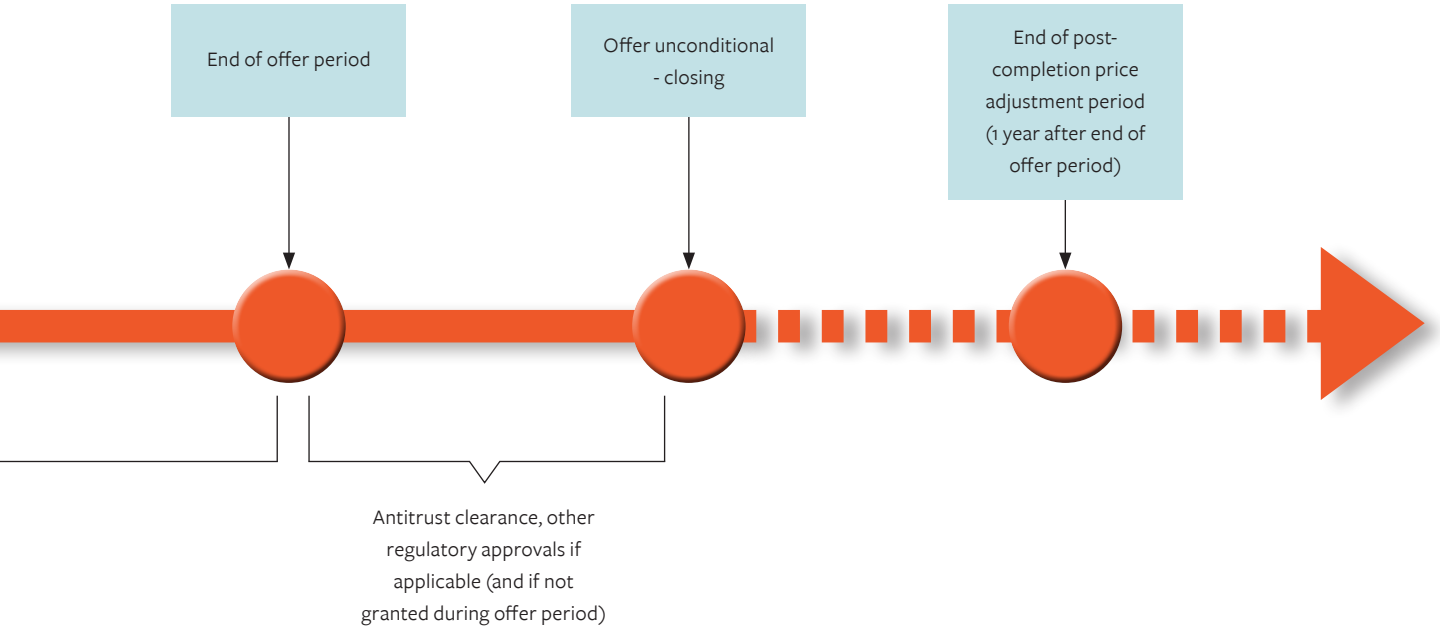
Germany - Illustrative Tak



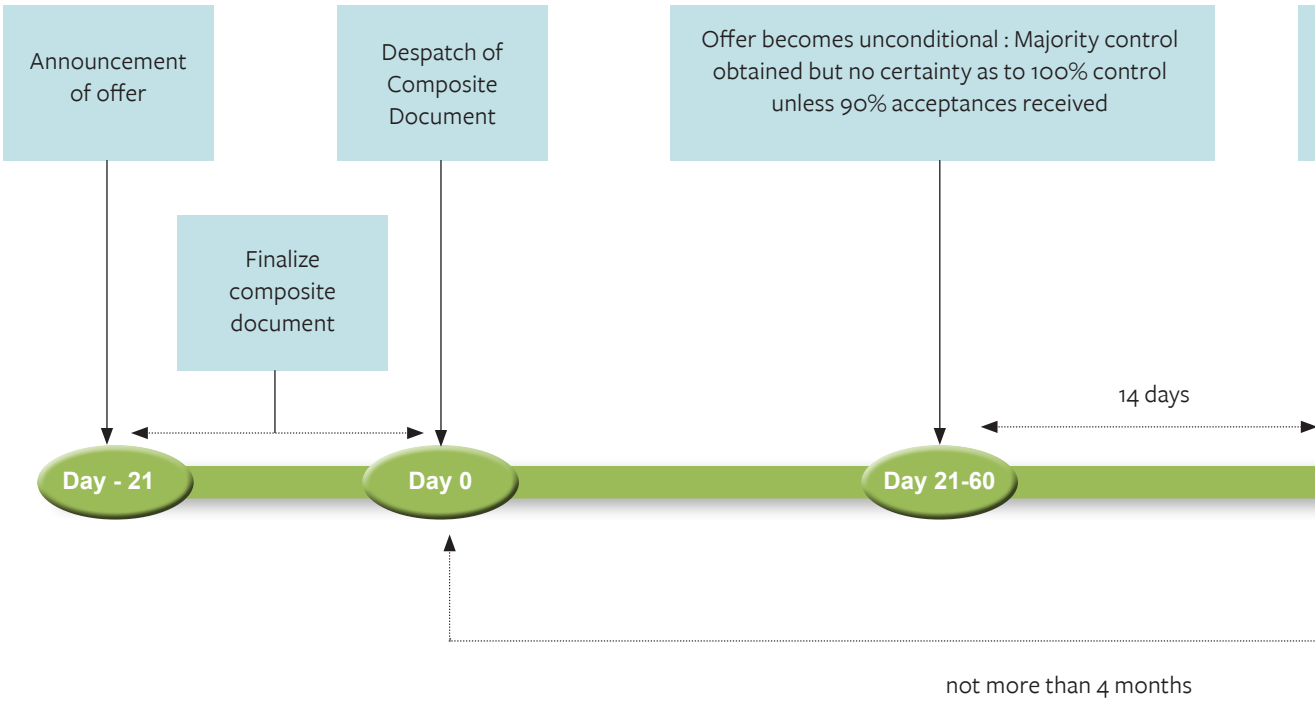
eover Offer Timetable



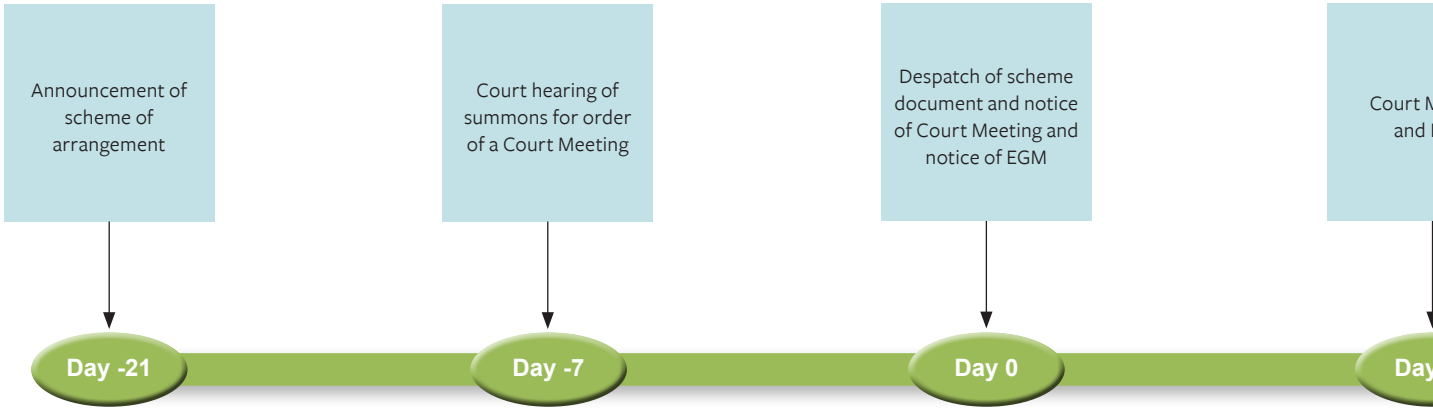
keover Offer Timetable



Hong Kong: Illustrative Ge

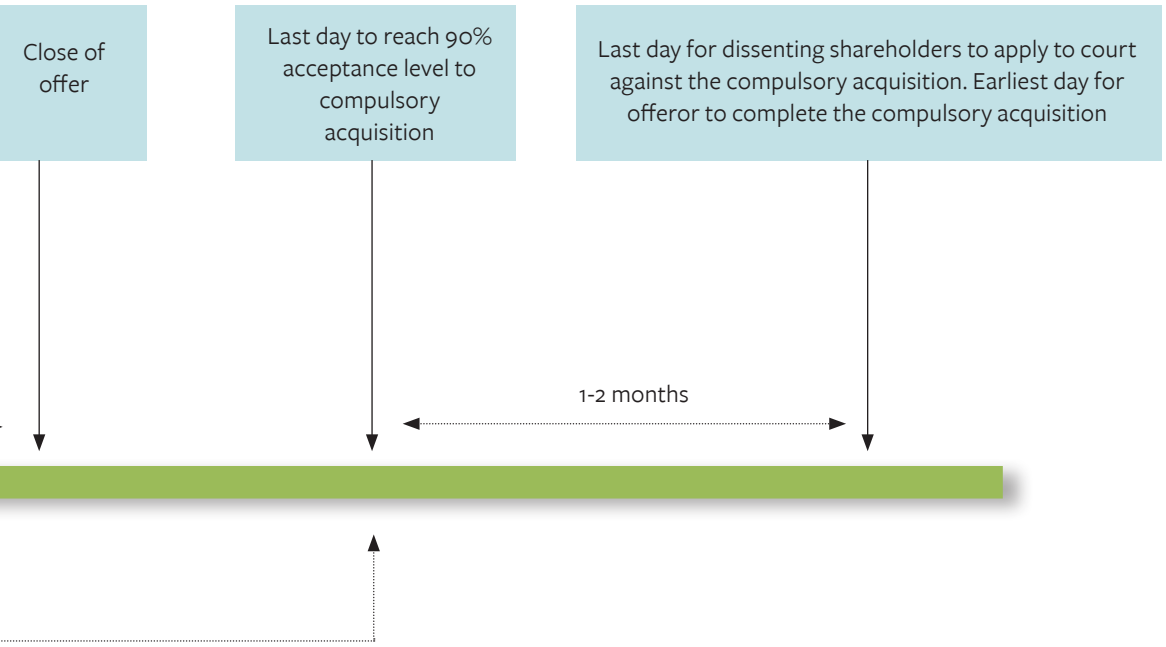


Hong Kong: Illustrative Scheme



1 The timeline and requirements are based on the assumption that the target company is incorporated in Hong Kong. For target companies incorporated in other jurisdiction (e.g. Cayman Islands, Bermuda), the timeline and requirements will be different.

eneral Offer Timetable[1]



e of Arrangement Timetable[1]