



HEIDTMAN & CO.

LAWYERS

TAKEOVERS - INFORMATION FOR TARGET COMPANY SHAREHOLDERS

The takeover process for companies listed on a stock exchange can be confusing for the target company's shareholders. This Fact Sheet is intended to provide some basic information to those shareholders about listed company takeovers and about their rights during the takeover process.

What Is a Takeover?

In essence, a successful takeover changes control of the voting power exercisable at a company's general meetings. A person or another company must follow the takeover procedure if they buy shares in a listed company which gives them more than 20% of the voting power.

What Are a Shareholder's Rights in a Takeover?

In a takeover, the law protects shareholders' rights. In a nutshell, shareholders have the right:

- * to know who is offering to take over their company;
- * to enough information to make an informed decision on whether or not to sell their shares;
- * to a certain amount of time to make up their mind; and
- * so far as practicable, to share equally with all other shareholders in the available benefits.

Using and Enforcing Rights

To take full advantage of their rights as a shareholder in a target company, we recommend shareholders keep up to date with that company's affairs, read the reports it sends to shareholders, and read the business sections of the newspapers. Shareholders can use the Australian Stock Exchange ("ASX") website (www.asx.com.au) to see if any announcements have been made by their company.

During a takeover, shareholders will receive documents from the bidder and from their company. These documents are known as the "bidder's statement" and the "target's statement" respectively. They are required by law to give shareholders enough information to decide whether or not to accept the takeover offer made by the bidder.

Getting Advice

Shareholders who are not sure what to do in a particular situation should obtain advice from a licensed investment adviser or stockbroker.



Announcement of the Bid



The first thing that happens in a takeover is that the bidder will announce through the ASX that it wants to acquire shares in the target company.

The most common method used by bidders to acquire shares in a takeover is an off-market bid. In an off-market bid the bidder sends each shareholder a bidder's statement and a written offer to buy their shares within two months of the bid being announced to the market.

The other method is through an on-market bid, where the bidder makes a general offer through a stockbroker to buy all the shares in the target company which are offered for sale up to a certain price, and for a certain period of time. On-market bids are not commonly used; but, if this method is used, shareholders will still receive a bidder's statement within 14 days of the bid being announced.

Information About the Bid

When the bid is an off-market bid, the bidder's statement is lodged with the Australian Securities & Investments Commission ("ASIC"), and served on the target company and the ASX. The bidder's statement explains all the details of the bid. It must contain certain information specified by law, and details of the terms of the offer being made to shareholders of the target company. The bidder's statement will contain the information shareholders need to make a decision about the offer.

Shareholders will be sent a copy of the bidder's statement and offer between 14 and 28 days after a copy is sent to the target company and, in any event, no later than two months after the initial announcement of the bid to the market.

When the bid is an on-market bid, the bidder also issues a bidder's statement. This is lodged with ASIC and shareholders will get a copy of the bidder's statement sent to them within fourteen days of the initial announcement of the bid to the market.

What is the Bidder Offering?

In an off-market bid, the bidder may offer cash and/or shares. If it offers cash, it must indicate where the money will come from. If it offers shares, it must provide sufficient information about the company whose shares are being offered for shareholders of the target company to decide whether they want to accept those shares.

In an on-market bid, the bidder must offer cash only.

Are There Any Conditions?

Some off-market bids are unconditional and the bidder will buy

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(target company) shares with no strings attached.

However, an off-market offer may be conditional. For example, the bidder may indicate the offer will go ahead only if a certain percentage of shareholders accept within a certain time.

If the conditions are not met or removed by the time the offer closes, the takeover stops, and none of the acceptances already given take effect.

All on-market bids must be unconditional.

What Will Happen to the Target Company?

The bidder's statement will indicate what the bidder intends to do with the target company. Shareholders should determine how the bidder's plans for the company will affect them as shareholders. For example, the bidder may intend to seek to have the target company's shares delisted from the stockmarket, which means shares in that company may be more difficult to sell if the offer is not accepted.

While the Bid is Open How Long Do Shareholders Have to Decide?



Shareholders will be given at least one month from the date on which the off-market bidder's statement is sent to them, to make a decision. The closing

date for bids may be extended by the bidder.

What Do the Target Company's Directors Recommend?

The target company's directors must give a formal answer to the offer, called a "target's statement".

The target's statement will contain all the information shareholders will require to decide whether to accept or reject the offer. It will also contain a statement from the target company's directors recommending that shareholders either accept or reject the offer. Shareholders will be sent a copy of the target company's statement within fifteen days after the bidder has completed sending its bidder's statements to shareholders.

If the Board of the target company decides to fight the takeover, and urges shareholders to reject it, shareholders can expect all sorts of legal and public skirmishing. It is quite common for advertisements to appear persuading shareholders to adopt one view or the other. Market research firms may telephone shareholders to find out what they intend to do, and shareholders may suddenly find themselves the centre of attention.

If the Board of the target company recommends that shareholders accept the offer, no one will probably hear much argument.

Can the Terms of the Offer Change?

Bidders can change the terms of the offer. An unconditional bidder can increase the price offered or extend the time the bid is open. A conditional bidder can remove some or all of the conditions and can sometimes extend the bid. Where an off-market bid is varied, the bidder must send a notice of the variation to shareholders.

What if a Rival Bid is Made?

The same steps are followed. Shareholders should examine the rival bid just as closely as the original bid. The target company's directors will give shareholders their recommendation. The takeover then becomes an auction, and shareholders may benefit from the competitive bidding.

What Should Shareholders Do?

Each shareholder must decide whether to accept or reject an offer. However, some general comments which may assist shareholders are as follows:

- * Keep your options open for as long as you can. If you accept an offer immediately, you cannot afterwards accept a rival offer. However, if you accept an off-market bid early, and that bidder increases the offer price, you will automatically receive the increased offer price.
- * If the off-market bid includes shares as consideration, you should consider consulting your tax adviser.
- * If you accept an off-market bid which is conditional, you will not

receive the money for your shares until the conditions are satisfied or removed.

- * If you accept an off-market bid, you sell directly to the bidder and you do not have to pay brokerage. Stamp duty is no longer imposed on transfers of listed shares.
- * You can always sell your shares on the ASX through your stockbroker at any time if you think that may be a better option.

What Happens When the Bid Closes?



If the Offer Was Accepted

If a shareholder accepts an off-market bid, the bidder must pay what was offered within twenty one days after the close of the bid (or after acceptance if the bid was unconditional). If the bid was conditional, and the conditions are not met, shares will be returned to the relevant shareholders.

If the Offer Was Not Accepted

If the bidder managed to get acceptance by at least 90% of the class of shares for which it was bidding, it may (and usually does) issue a notice that it wants to compulsorily acquire the remaining shares. This means that the shares of shareholders who did not accept the offer will be purchased by the bidder on the same terms as those offered to the shareholders who did accept the offer, even if they do not want to sell.

If the bidder did not get acceptance from the holders of at least 90% of the relevant shares, it cannot acquire the shares of those shareholders who did not accept the offer.

For specific advice on takeovers, please contact David Heidtman or Peter Stansfield.

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