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A Guide to Takeovers in Australia

Australian takeover laws are an essential component of an effective capital market.

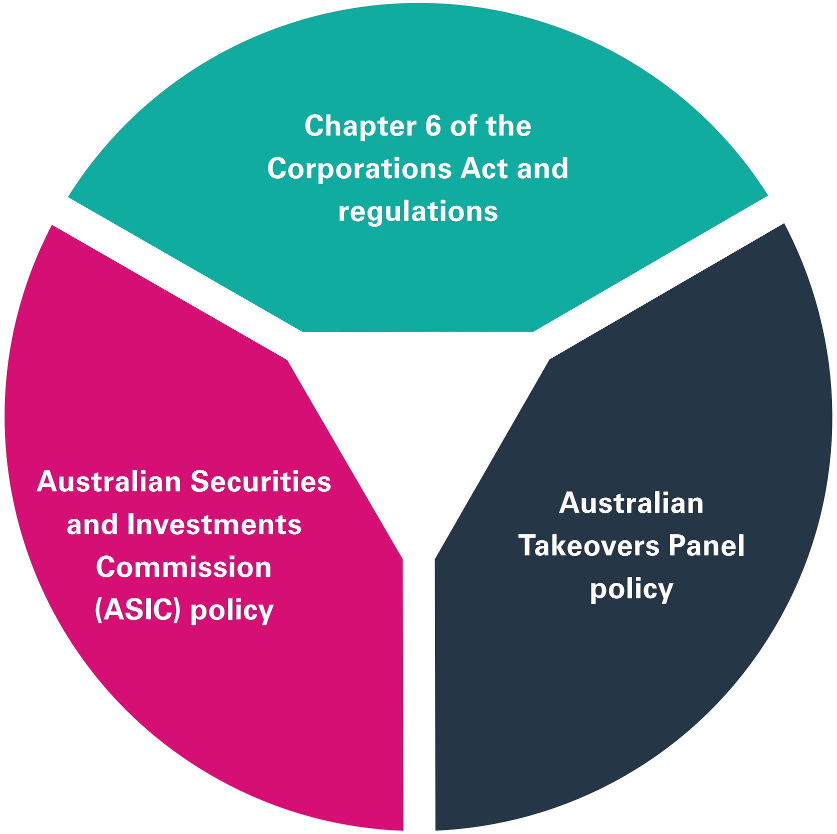
Designed to create a fair but competitive playing field, these laws regulate the acquisition of control of listed Australian companies, managed investment schemes and unlisted Australian companies with more than 50 members.

This guide breaks down the key principles of takeover laws in Australia, including the "20% rule", relevant interests, voting power and association, as well as outlining the most common means of effecting a takeover: schemes of arrangement, off-market takeover bids and on-market takeover bids.

Learn more about:

Takeover Laws in Australia

Australian takeover laws are a combination of legislation and policy that apply to only certain entities:



Australian Takeover Laws – Main Principles

The Australian takeover laws ensure that several main principles are applied:

How the Main Principles Are Applied

The main principles of takeovers in Australia are applied by prohibiting the acquisition of control (unless it is through an exception).

The prohibition on acquiring control is largely achieved through a rule known as the "**20% rule**".

The 20% Rule

A person must not acquire a "relevant interest" in voting shares of a company, or voting securities of a management investment scheme, that is subject to the takeover laws, if that acquisition would result in any person's "voting power" exceeding 20% (unless it is through an exception).

The '20% rule' relies on some key concepts:

Relevant Interest

A person will have a "relevant interest" in voting shares if they are the holder of the shares, or if they have direct or indirect control over the voting or disposal of the shares.

Voting Power

A person's "voting power" is the aggregate of the number of votes attached to all of the voting shares in which that person or their "associates" have a "relevant interest".

"Voting power" is expressed as a percentage of all issued voting shares in the company or management investment scheme.

Associates

Associates include:

- Persons who are acting together in relation to control of a company or managed investment scheme
- Parties to any agreement for the purpose of controlling or influencing the composition of the board or the conduct of the affairs of the company or managed investment scheme
- Members of the same corporate group

The Exceptions – Gateways to Acquiring Control

The '20% rule' is subject to various exceptions that allow acquisitions of control. Each exception is structured so that it gives effect to the main principles.

The main exceptions are the most commonly used to reach 100% ownership:

The Main Exceptions

Takeover Bid

An acquisition resulting from the acceptance of an offer under a takeover bid.

Scheme of Arrangement

An acquisition resulting from a scheme of arrangement (which requires shareholder and court approval).

The other common exceptions are less effective in reaching 100% ownership:

Shareholder Approval	3% Creep
An acquisition approved by an ordinary (50%) resolution of target shareholders (with the acquirer and any "seller" not voting). It is not possible for this exception to be used to acquire 100% of target shares.	Acquisitions of up to 3% every six months from a starting point above 19% Using this exception can take considerable time to achieve control, so it is most commonly seen as part of a longer-term strategy.
Rights Issues	**Downstream Acquisition**
An acquisition that results from a pro rata rights issue to security holders. The control effect cannot exceed what is reasonably necessary to raise funds, so this exception is of limited use as part of a deliberate strategy to acquire control.	An indirect acquisition resulting from an acquisition of relevant interests in another listed entity. Control of the downstream company cannot be a significant purpose of the upstream acquisition, so this exception is of limited use as part of a deliberate strategy to acquire control.

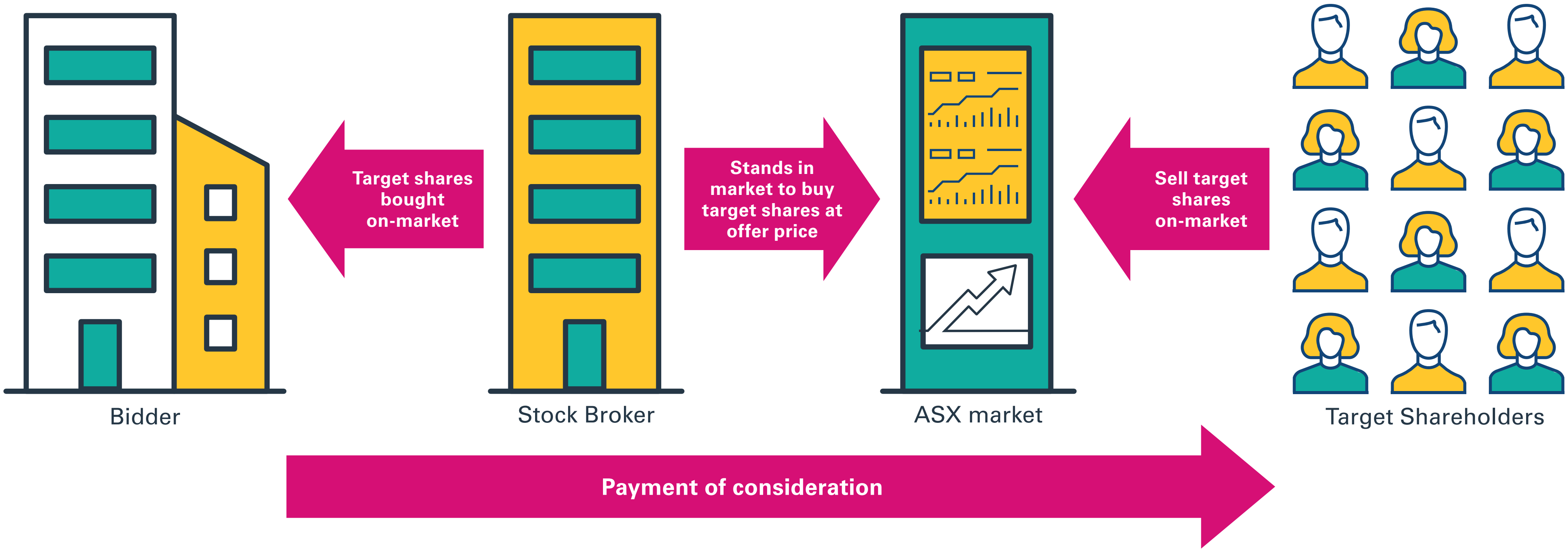
On-market Takeover Bids in Australia

What Is an On-market Takeover Bid?

An on-market takeover bid, also known as a market bid, is a procedure under which a bidder can acquire up to 100% of the shares in a company that is subject to the Australian takeover laws.

Under an on-market takeover bid, a bidder appoints a stockbroker to stand in the market on ASX on behalf of the bidder and purchase target shares at the offer price.

In the five-year period between 2017 and 2022, there were 14 on-market takeover bids announced for ASX-listed companies, making on-market takeover bids far less common than off-market takeover bids.



Key Features

Key features of an on-market takeover bid:

How It Works – Bidder appoints a stockbroker to stand in the market on ASX and purchase target shares on behalf of the bidder.

Control of Process – Bidder largely controls the process, as it makes the offers and determines the offer price and the offer period.

Friendly or Hostile – Can be friendly where made with a target board recommendation, or hostile where made with no cooperation or support from the target.

Shares Covered – Must be for all of the target shares in the bid class.

Approvals Required – There are no acceptances of the offer; rather, target shareholders who want to take up the bidder's offer simply sell their shares on ASX. No approvals are required from target shareholders or the court.

Threshold – To achieve 100% ownership, compulsory acquisition must be undertaken.

To commence compulsory acquisition, the bidder must reach a 90% relevant interest.

Conditions – Cannot be subject to any conditions.

Key Features continued

Key features of an on-market takeover bid:

Outcome – Bidder will own as many target shares as are sold to it at the offer price on-market.

This creates a risk that the bidder will hold a less than 100% interest at the end of the offer.

Consideration – Cash only.

Equality – The principle regarding equality of opportunity is applied to on-market takeover bids through rules including a requirement that all offers be on the same terms.

Price Increases – The offer price can be increased by the bidder at any time prior to the last five trading days of the offer period.

Shareholders who have already accepted the offer do not receive any increase in the offer price.

Disclosures – Bidder prepares a bidder's statement, which includes the terms of the offer and all other information known to the bidder that is material to target shareholders' decision as to whether to accept the offer.

Target responds with a target's statement that contains the target directors' recommendation and all other information known to that target that is material to target shareholders.

The target's statement usually includes an independent expert report valuing the target shares.

Timetable – An on-market takeover bid followed by compulsory acquisition usually takes about three months to complete, but has the potential to reach control very quickly.

The offer must be open for a minimum of one month and can be extended for up to 12 months.

ASIC Oversight – ASIC does not review a bidder's statement or target's statement before it is sent to target shareholders, but ASIC may apply to the Takeovers Panel for declarations of unacceptable circumstances where such documents are deficient.

Overview of Process

The process of an on-market takeover bid follows steps prescribed by the Corporations Act, ASIC policy and the relevant market rules:

Preparing to Open Offer

- Bidder drafts and verifies bidder's statement
- Bidder obatins any necessary regulatory approvals
- Bidder appoints an ASX Market Participant (i.e. a stockbroker) to act on its behalf
- Bidder and/or target apply to ASIC and ASX for any necessary relief or waivers
- Bidder drafts initial substantial holder notice

Offer Period

- The bidder's stockbroker and the bidder each announce the on-market takeover bid to ASX (usually a joint announcement)
- Bidder releases bidder's statement
- Offer opens for acceptance and the bidder starts soliciting acceptances
- Target drafts and verifies the target's statement
- Target engages an independent expert to draft a report on whether the scheme is fair and reasonable, which is to be included in the target's statement
- Target releases target's statement
- Bidder and target monitor developments to determine strategy, including waiver of conditions, increases in the offer price and extensions of the offer period
- Bidder and target make supplementary disclosures when required
- Bidder pays the offer price to target shareholders who have accepted the offer

Offer Close

- Offer closes
- If the bidder reaches at least a 90% interest, the bidder commences the compulsory acquisition process
- Target directors resign and are replaced by bidder's nominees
- The target is delisted from ASX

Step by Step Process

1. Preparation

An on-market takeover bid requires significant preparation by the bidder before the offer opens:

- **Stockbroker** – The bidder must appoint (usually in writing) an ASX market participant (i.e. a stockbroker) to act on its behalf in relation to the on-market takeover bid.
- **Regulatory approvals** – The bidder must obtain any necessary regulatory approvals because the prohibition on offer conditions means that such approvals cannot be obtained during the offer period.
- **Bidder's statement** – The bidder must draft and verify the bidder's statement, as it will be released on the same day the on-market takeover bid is announced.

2. Offer Open

The bidder's stockbroker must announce the on-market takeover bid to ASX. That announcement must state key information about the on-market takeover bid, including the cash offer price, the offer period and the bidder's existing relevant interest in target shares. The bidder must also announce the on-market takeover bid to ASX. This is usually achieved by the stockbroker and the bidder releasing a joint announcement.

On the same day that the announcement of the on-market takeover bid is made, the bidder must release a copy of its bidder's statement by giving a copy of the bidder's statement to the target, ASIC and ASX. Usually, the bidder's statement is attached to the bidder's and stockbroker's announcement of the on-market takeover bid.

The bidder must send (by mail) the bidder's statement to target shareholders within 14 days after the announcement of on-market takeover bid, and the offer period commences when the bidder's statement is sent. However, during that period of up to 14 days before offer opens, the bidder is free to acquire target shares on-market at the offer price.

The bidder's ability to purchase target shares on-market from announcement is a key strategic advantage for the bidder. There have been examples of on-market takeover bids where control of the target passed to the bidder within a week of announcement, which is well before the offer opened.

3. Target Response

After the offer opens, the target must release its target's statement to target shareholders within 14 days after the announcement of the on-market takeover bid. The target's statement is released by the target, giving a copy to the bidder, ASIC and ASX and sending it by mail to target shareholders.

Given the bidder's ability to purchase target shares on-market from the day of the announcement, it is common for the target to immediately respond to the announcement of an on-market takeover bid in an announcement to ASX advising target shareholders of what they should do.

Step by Step Process

4. Offer Period

Once open, the offer typically will be open for one month.

During the time the offer is open, the bidder will face some tactical decisions:

- **Offer period extensions** – Typically, the offer period will be extended by the bidder several times beyond the initial one-month period to allow target shareholders more time to accept. There are limitations on extending the offer period within the last five trading days of the offer period.
- **Price increases** – The offer price can be increased by the bidder at any time prior to the last five trading days of the offer period. As target shareholders who have already accepted the offer do not receive any increase in the offer price, target shareholders may be reluctant to sell their shares if they think that a price rise may be possible. To encourage acceptances, the bidder can publicly state that it will not increase the offer price.

5 Disclosures

During the offer period, both the bidder and the target will need to make supplementary disclosures to target shareholders of any new information that is material to the target shareholders' decision as to whether to accept the offer.

Supplementary disclosures can relate to developments regarding the offer, such as satisfaction or waiver of offer conditions, extensions of the offer period or price increases, and they also can relate to matters affecting the parties, such as changes to the target's performance.

6. Offer Close

There are no formal steps required to close an offer. It simply closes when the offer reaches its closing date.

The bidder may commence the process of compulsory acquisition of all remaining target shares once the bidder reaches ownership of 90% of all target shares. This may occur before the offer closes.

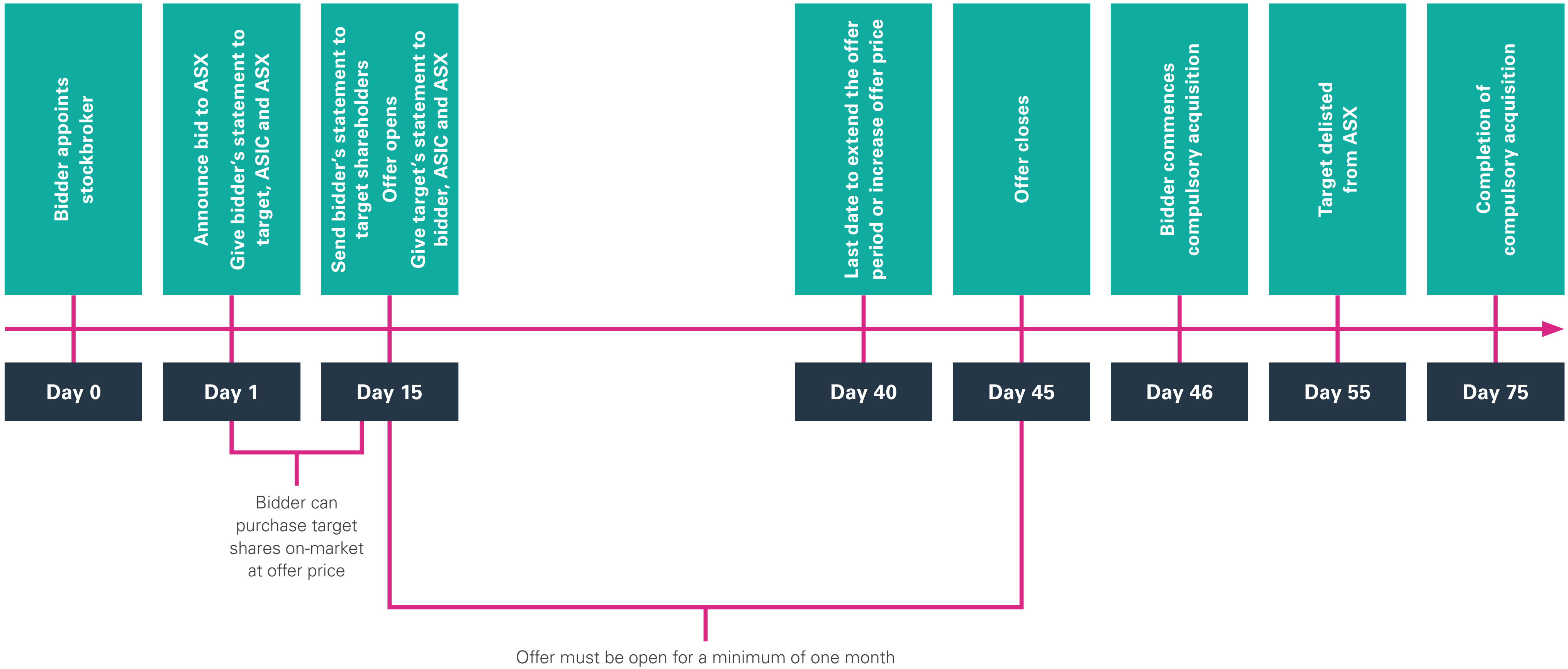
If compulsory acquisition is commenced, the target then will be delisted from ASX.

Timetable

An on-market takeover bid followed by compulsory acquisition usually takes about three months to complete.

There is potential for an on-market takeover bid to achieve control very quickly – in one on-market takeover bid, the bidder secured control of target within one week of announcement and reached 90% ownership within three weeks of announcement.

An indicative timetable for an on-market takeover bid is as follows:



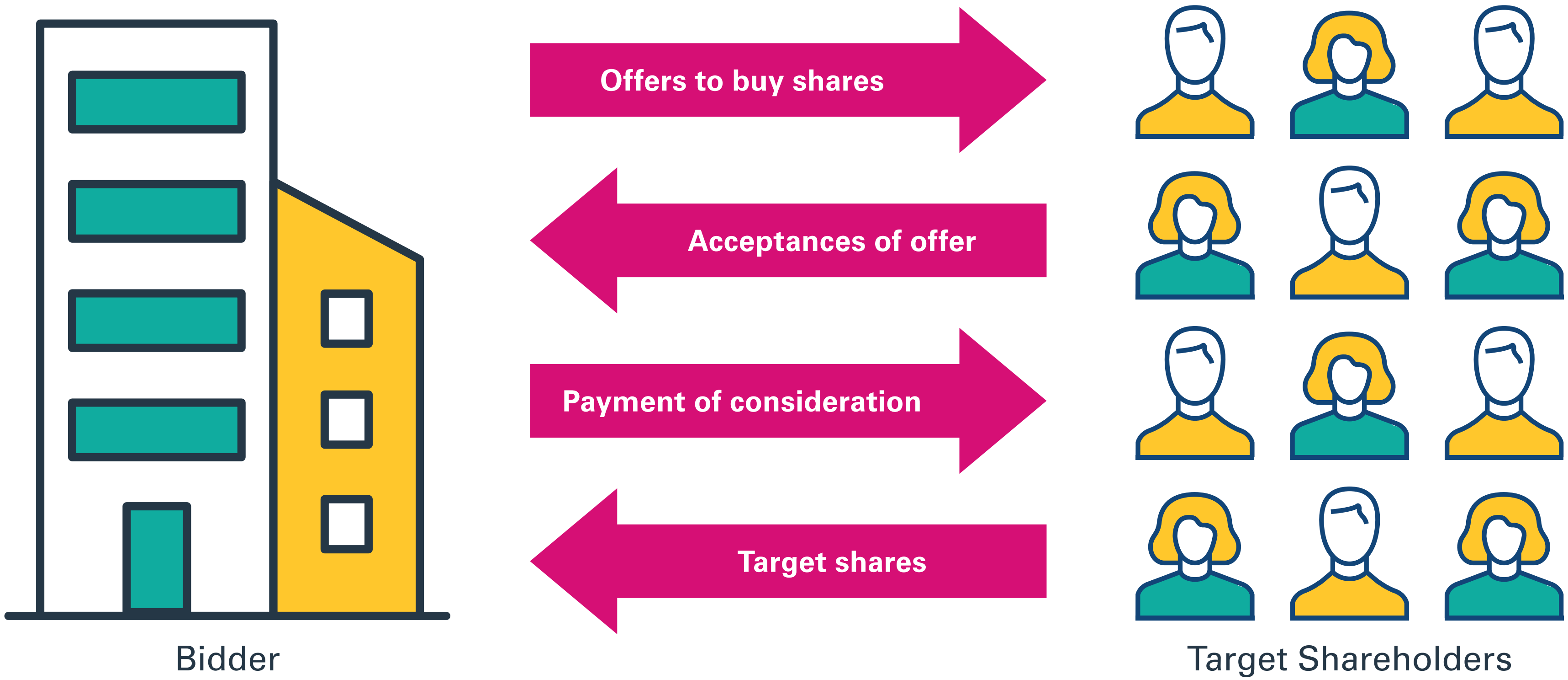
Off-market Takeover Bids in Australia

What Is an Off-market Takeover Bid?

An off-market takeover bid is a procedure under which a bidder can acquire up to 100% of the shares in a company that is subject to the Australian takeover laws.

Under an off-market takeover bid, a bidder makes offers on the same terms to all target shareholders to acquire their shares in return for consideration paid by the bidder to those target shareholders who accept the bidder's offer.

The offers are sent to target shareholders by the bidder, and acceptances of the bidder's offer are sent back to the bidder by those target shareholders who chose to accept the bidder's offer.



Key Features

Key features of an off-market takeover bid are:

How It Works – Bidder makes offers on the same terms to all target shareholders to acquire their shares in return for consideration paid by the bidder to those target shareholders who accept the offer.

Control of Process – Bidder largely controls the process as it makes the offers, determines the offer price, the offer terms and conditions, and the offer period.

Friendly or Hostile – Can be friendly when made with a target board recommendation, or hostile where it is made with no cooperation or support from the target.

Shares Covered – May be in respect of all of the target shares or a specified proportion of target shares.

Approvals Required – Target shareholders either accept or reject the bidder's offer. No approvals are required from target shareholders or the court.

Threshold to Reach 100% – To achieve 100% ownership, compulsory acquisition must be undertaken.

To commence compulsory acquisition, bidder must reach a 90% relevant interest.

Outcome – Once the offers become unconditional, the bidder will own the shares of those that have accepted the offer.

Typically the offer will become unconditional before the bidder can reach a 90% relevant interest, which creates a risk that the bidder will hold a less than 100% interest at the end of the offer.

Key Features continued

Key features of an off-market takeover bid are:

Conditions – Can be subject to conditions. Some conditions are prohibited, such as a maximum level of acceptances or conditions that can be controlled solely by the bidder or that rely on the bidder's subjective opinion.

Consideration – Any form of consideration (including cash, shares or both).

Equality – The principle regarding equality of opportunity is applied to off-market takeover bids through rules including:

- A requirement that all offers be on the same terms
- A prohibition on collateral benefits outside of the offer
- That the offer price cannot be lower than the price the bidder or any of its associates paid or offered to acquire a target share in the previous four months
- An automatic offer price increase if target shares are purchased by the bidder or its associates at a higher price

Price Increases – The offer price can be increased by the bidder at any time before the offer period closes, and shareholders who have already accepted the offer are entitled to any increase in the offer price.

Price increases in the last seven days of the offer period automatically extends the offer period by 14 days.

Disclosures – Bidder prepares a bidder's statement, which includes the terms of the offer and all other information known to the bidder that is material to target shareholders' decision as to whether to accept the offer.

Target responds with a target's statement that contains the target directors' recommendation and all other information known to that target that is material to target shareholders.

The target's statement usually includes an independent expert report valuing the target shares.

Timetable – Typically takes a minimum of two to three months from offer announcement to close, but exact timing will depend upon the number of extensions of the offer.

The offer must be open for a minimum of one month, and it can be extended for up to 12 months.

ASIC Oversight – ASIC does not review a bidder's statement or target's statement before it is sent to target shareholders, but ASIC may apply to the Takeovers Panel for declarations of unacceptable circumstances where such documents are deficient.

Steps – Approach to Announcement

Until the transaction is announced, the process of an off-market takeover bid is largely a commercial negotiation between the parties that will typically include due diligence. The exact steps can vary between transactions, but are typically as follows:

Approach

- Bidder considers transaction structure, including analysis of target share register to identify potential impediments
- Bidder obtains any pre-bid stake in target
- Bidder formulates indicative terms of the takeover bid
- Bidder makes non-binding indicative approach to target proposing the terms on which the bidder might make a takeover bid
- Bidder and target negotiate confidentiality agreement

Due Diligence

- Bidder undertakes due diligence on target's confidential information
- If the consideration includes bidder scrip, the bidder undertakes due diligence on target's confidential information
- Bidder and target identify any technical issues that may require regulatory relief or waivers or changes to the terms of the takeover bid

Documents

- Bidder and target negotiate a bid implementation agreement that sets out each party's rights and obligations in making and recommending the takeover bid and includes exclusivity undertakings from the target to the bidder
- Bidder seeks any statements of support (e.g. intention to accept offer) from major target shareholders
- Bidder drafts the offer announcement with input from the target

Announcement

- Agreeing the bid implementation agreement triggers a requirement to announce the takeover to ASX
- The announcement typically summarises the offer terms and attaches a copy of the bid implementation agreement

Steps – After Announcement to Offer Close

After the transaction is announced, the process of an off-market takeover bid follows steps that are prescribed by the Corporations Act and ASIC policy:

Disclosures

- Bidder drafts and verifies bidder's statement
- Bidder applies for any necessary regulatory approvals
- Bidder and/or target apply to ASIC and ASX for any necessary relief or waivers
- Bidder drafts initial substantial holder notice

Approvals

- Bidder announces offer and relases the bidder's statement
- Offer opens for acceptance and the bidder starts soliciting acceptances
- Target drafts and verifies the target's statement
- Target engages an independent expert to draft areport on whether the offer is fair and reasonable, which is to be included in the target's statement
- Target releases the target's statement
- Bidder and target monitor developments to determine strategy, including waiving offer conditions, extending from the offer period and any increases in the offer price
- Bidder and target make supplementary disclosures when required
- After the offer becomes unconditional, the bidder pays the offer price to target shareholders who have accepted the offer

Implementation

- Offer closes
- If the bidder reaches at least a 90% interest, the bidder commences the compulsory acquisition process
- Target directors resign and are replaced by the bidder's nominees
- Target is delisted from ASX

The Role of the Bidder and the Target

The bidder and the target are each responsible for various actions and strategic decisions through the process of an off-market takeover bid.

1. Offer Open

The bidder can publicly announce an intention to make an off-market takeover offer for the target and then later release a bidder's statement (provided the offers are made within two months) or the bidder can simply release a copy of its bidder's statement. The bidder's statement is released by the bidder, giving a copy to the target, ASIC and ASX.

The release of the bidder's statement does not open the offer for acceptance; rather, the bidder's statement must first be sent by mail to all target shareholders. Unless the target consents otherwise, the bidder is not permitted to start sending its bidder's statement to target shareholders until 14 days after the bidder's statement is given to the target.

2. Target Response

After the offer opens, the target must release its target's statement no later than 15 days after the bidder's statement is sent to target shareholders. The target's statement is released by the target, giving a copy to the bidder, ASIC and ASX and sending it by mail to all target shareholders.

3. Offer

During the time the offer is open, the bidder will face some tactical decisions:

- **Offer conditions** – The bidder only acquires ownership of shares that accept the offer if the offer becomes unconditional. Therefore, to be successful, all offer conditions will need to be satisfied or waived. Whether and when to waive any other conditions, such as a minimum level of acceptances (often 50% or 90%) are key decisions for the bidder.
- **Offer period extensions** – Typically, the offer period will be extended by the bidder several times beyond the initial one-month period to allow target shareholders more time to accept. A looming offer close date can encourage acceptances, so when to extend and for how long are key decisions for the bidder.
- **Offer price increases** – The bidder can increase the offer price at any time before the offer period closes, regardless of wither the offer is still conditional. Regardless of when the offer price is increased, target shareholders who have already accepted the offer are entitled to be paid the increased offer price.

The Role of the Bidder and the Target continued

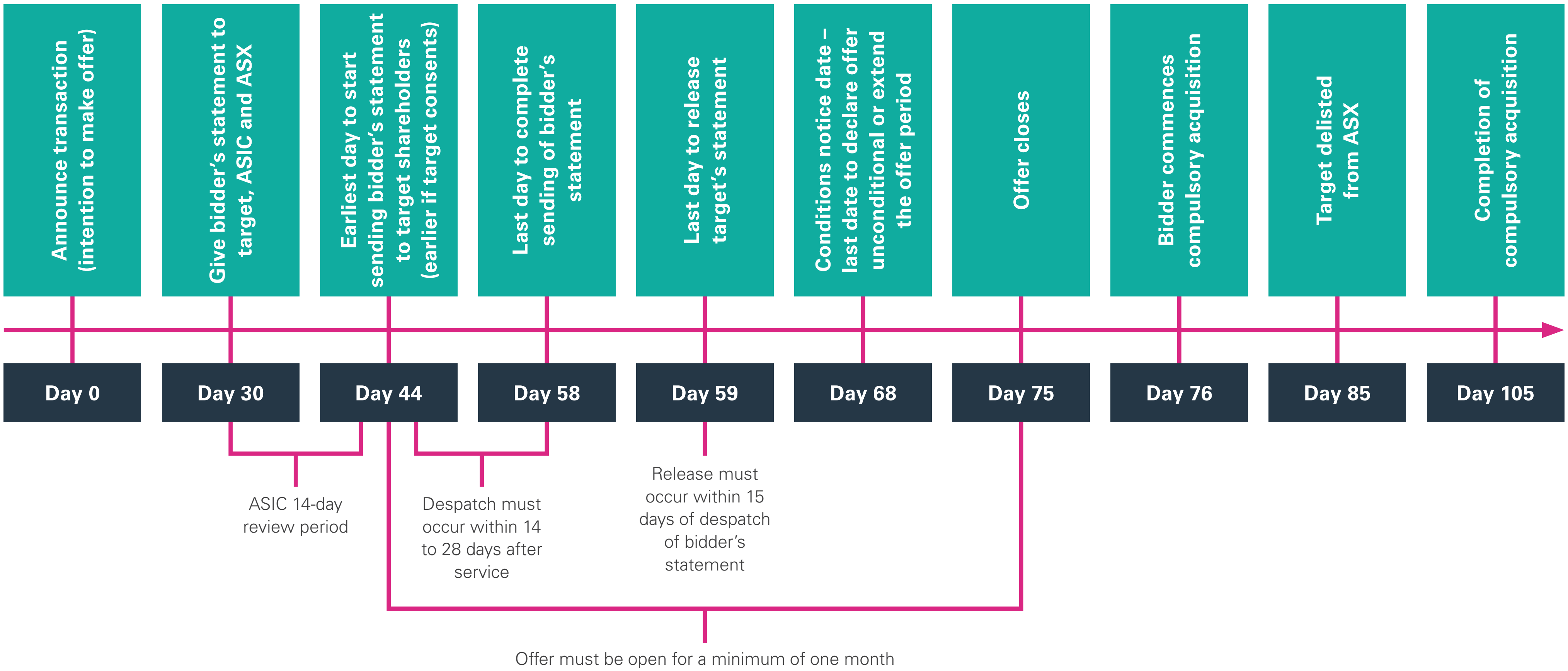
The bidder and the target are each responsible for various actions and strategic decisions through the process of an off-market takeover bid.

4. Disclosures	5. Payment	6. Offer Close
During the offer period, both the bidder and the target will need to make supplementary disclosures to the target shareholders of any new information that is material to target shareholders’ decision as to whether to accept the offer. Supplementary disclosures can relate to developments regarding the offer, such as satisfaction or waiver of offer conditions, extensions of the offer period or price increases, and they can also relate to matters affecting the parties, such as changes to the target’s performance.	Once the offer becomes unconditional, the bidder must pay the offer price to target shareholders who have accepted the offer within the earlier of one month after the offer becomes unconditional or 21 days after the offer period closes.	There are no formal steps required to close an offer: it simply closes when the offer reaches its closing date. The bidder may commence the process of compulsory acquisition of all remaining target shares once the bidder reaches ownership of 90% of all target shares. This may occur before the offer closes. If compulsory acquisition is commenced, the target will then be delisted from ASX.

Timetable

An off-market takeover bid typically takes a minimum of two to three months from the offer announcement to its close.

An indicative timetable for an off-market takeover bid is as follows:



Schemes of Arrangement in Australia

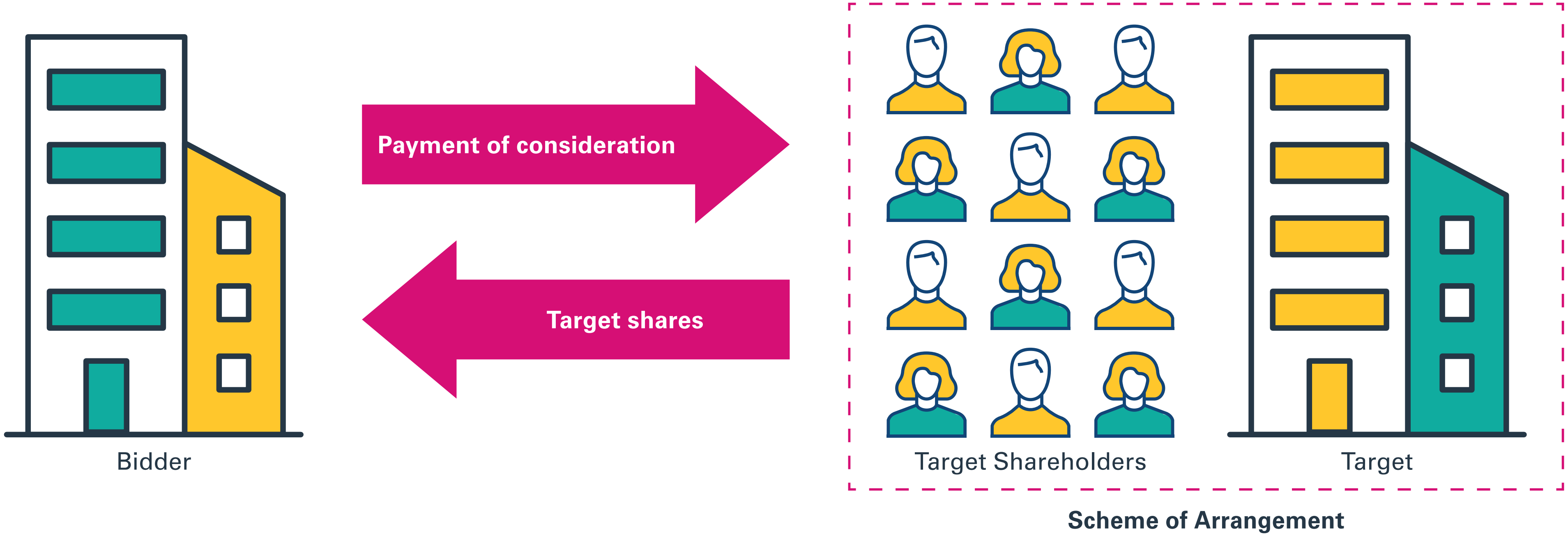
What Is a Scheme of Arrangement?

A scheme of arrangement is a procedure under which a company can reconstruct its capital, assets or liabilities.

A scheme of arrangement can be used to enable a bidder to acquire up to 100% of the shares in a company, giving an equivalent outcome to a takeover bid.

Under a scheme of arrangement, the target company proposes an arrangement between the target and the target shareholders. The terms of the arrangement require 100% of the shares in the target to be transferred to the bidder in return for consideration paid by the bidder to all target shareholders.

The arrangement only becomes legally binding on the target and the target shareholders if the target shareholders vote to approve it and the court also approves it. Once legally binding, the arrangement binds all target shareholders, even those who voted against it or who did not vote.



Key Features

Key features of a scheme of arrangement:

How It Works – Target seeks the approval of its shareholders and the court for the compulsory transfer of all target shares to a bidder in return for consideration paid by the bidder to the target shareholders.

Control of Process – Target largely controls the process as it seeks the approval of its shareholders and the court following an initial approach by the bidder.

Approvals Required – Approvals are required from both target shareholders and the court:

- The Court must first approve the despatch of the scheme booklet and the convening of meetings of each class of target shareholders
- Then a resolution in favour must be passed at meetings of each class of target shareholders
- After the shareholder vote, the target will return to court to seek court orders approving the scheme

Friendly or Hostile – Requires the cooperation of both the target and bidder, so cannot be hostile.

Threshold to Reach 100% – For the scheme to be approved, a resolution in favour must be passed at meetings of each class of target shareholders by both:

- 75% of the votes cast on the resolution
- More than 50% in number of the target shareholders voting on the resolution (in person or by proxy)

Typically, the bidder and its associates will not vote on the resolution to approve the scheme.

Shares Covered – May be in respect of some or all of the target shares.

Outcome – If the scheme is approved, the bidder will acquire 100% ownership of target, or if the scheme is not approved, the bidder will not acquire any target shares.

This makes schemes the preferred way to effect a takeover, where reaching 100% ownership is the goal.

Key Features continued

Key features of a scheme of arrangement:

Conditions – Can be subject to conditions. The prohibitions on certain types of conditions in off-market takeover bids do not apply to schemes, but it is uncommon to see conditions in schemes that can be controlled solely by the bidder or that rely on the bidder's subjective opinion.

Any conditions must be satisfied or waived before the scheme is approved by the court.

Consideration – Any form of consideration (including cash, shares or both.

Equality – Flexibility to treat target shareholders differently, but this must be disclosed and may create separate shareholder classes requiring separate votes.

Price Increases – The price can be increased before the scheme is voted on by shareholders, although this is more difficult than under a takeover bid, as it requires court approval, an adjournment of scheme meeting, and supplementary disclosure.

Disclosures – The target sends to its shareholders a scheme booklet that contains all information known to the target and the bidder that is material to a target shareholder.

ASIC expects the scheme booklet to effectively contain the same level of disclosure as a bidder's statement and target's statement combined.

The scheme booklet usually includes an independent expert report valuing the target shares.

Timetable – Typically takes three to four months from announcement to implementation.

ASIC Oversight – ASIC reviews scheme booklets before they are submitted to the court to be approved for despatch to shareholders.

The court must not approve a scheme unless ASIC has provided a statement of no objection (or the court is satisfied that the scheme's statement of no objection has not been proposed in order to avoid the takeover laws in Chapter 6 of the Corporations Act).

Steps – Approach to Announcement

Until the transaction is announced, a scheme of arrangement process is largely a commercial negotiation between the parties that will typically include due diligence. The exact steps can vary between transactions, but are typically as follows:

Approach

- Bidder considers transaction structure, including analysis of target share register to identify potential impediments
- Bidder formulates indicative offer terms
- Bidder makes non-binding indicative offer to target
- Bidder and target negotiate confidentiality agreement

Due Diligence

- Bidder undertakes due diligence on target’s confidential information
- If the consideration includes bidder scrip, bidder undertakes due diligence on target’s confidential information
- Bidder and target identify any technical issues that may require regulatory relief or waivers, or changes to the terms of the transaction

Documents

- Bidder and target negotiate a Scheme Implementation Agreement, which sets out each party’s rights and obligations in proposing, recommending and implementing the scheme, and includes exclusivity undertakings from the target to the bidder
- Bidder seeks any voting intention statements, call options or other forms of support from major target shareholders
- Bidder and target draft transaction announcement

Announcement

- Agreeing the Scheme Implementation Agreement triggers a requirement to announce the transaction to ASX.
- The announcement will typically summarise the transaction terms and attach a copy of the Scheme Implementation Agreement.

Steps – After Announcement to Implementation

After the transaction is announced, a scheme of arrangement process follows steps that are prescribed by the Corporations Act, ASIC policy and the court's rules:

Disclosures

- Target drafts and verifies the scheme booklet, with input from bidder
- Target engages an independent expert to draft an independent expert's report on whether the scheme is in the best interests of the target shareholders, which is to be included in the scheme booklet
- Bidder applies for any necessary regulatory approvals
- Bidder and/or target apply to ASIC and ASX for any necessary relief or waivers

Approvals

- ASIC reviews draft scheme booklet (including the independent expert's report)
- Target seeks court approval the despatch of the scheme booklet and the convening of the meetings of each class of target shareholders
- Target despatches scheme booklet
- Target holds shareholder meeting to approve scheme
- Target returns to court to seek court orders approving the scheme

Implementation

- Target lodges court orders approving the scheme with ASIC, and the scheme becomes legally effective
- Target shares are transferred to bidder under the terms of the scheme and the consideration is paid to target shareholders
- Target directors resign and are replaced by bidder's nominees
- Target is delisted from ASX

Approvals Required

There are two sets of approvals required to effect a scheme of arrangement from target shareholders and the court. Each has it's own processes and requirements.

1. Shareholder Approval

- Once the target (with input from the bidder) has drafted verified the scheme booklet, the target will lodge a draft of the scheme booklet with
- ASIC for review, which will take at least 14 days.
- Following ASIC's review, the target seeks the court's approval at the first court hearing to send (by mail) the scheme booklet to all target shareholders and to convene meetings with each class of target shareholders to vote on the scheme.
- The target will then hold the shareholder vote on whether to approve the scheme.

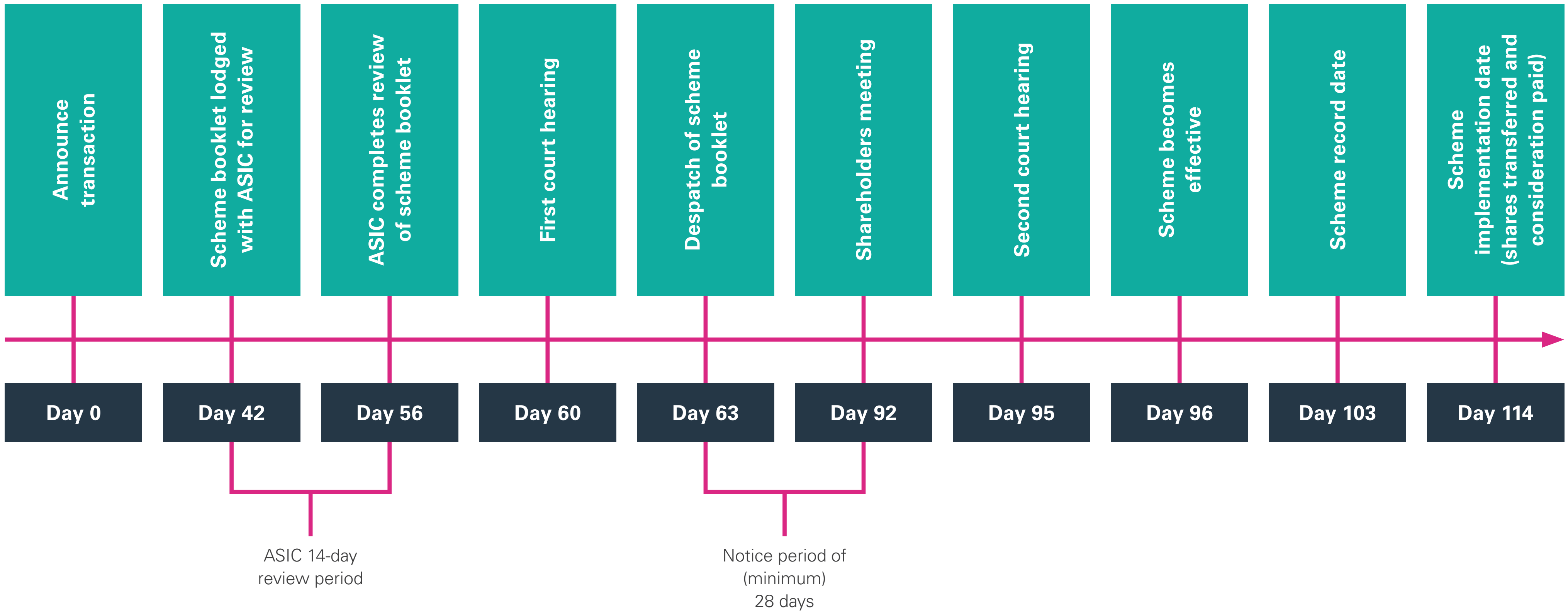
2. Court Approval

- If target shareholders approve the scheme, the target will then seek court orders approving the scheme at the second court hearing.
- The court will not typically approve a scheme that is subject of conditions, so any conditions of the scheme must be satisfied or waived before the second court hearing.
- The court must not approve a scheme unless ASIC has provided a statement of no objection (or the court is satisfied that the scheme has not been proposed in order to avoid the takeover laws in Chapter 6 of the Corporations Act).
- If the court approves the scheme at the second court hearing, it will become legally binding on the target when the court's orders are lodged with ASIC (usually by the next business day).

Timetable

A scheme of arrangement typically takes three to four months from announcement to implementation.

An indicative timetable for a scheme of arrangement is as follows:



Takeover Bids Versus Schemes of Arrangement in Australia

Key Differences

While a scheme of arrangement can be used to effect the same outcome as a takeover bid, the two procedures operate in different ways. These differences have tactical and strategic impacts.

	Takeover Bid	Scheme of Arrangement
Control of Process	Bidder largely controls the process, as it makes the offers and determines the offer price, the offer terms and conditions, and the offer period.	Target largely controls the process, as it seeks the approval of its shareholders and the court following an initial approach by the bidder.
Friendly or Hostile	Can be friendly when made with a target board recommendation or hostile when made with no cooperation or support from the target.	Requires the cooperation of both the target and the bidder, so it cannot be hostile.
Approvals Required	Target shareholders either accept or reject the bidder's offer. No approvals are required from target shareholders or the court.	Approvals are required from both the target shareholders and the court: • The court must first approve the despatch of the scheme booklet and the convening of meetings of each class of target shareholders. • Then a resolution in favour must be passed at meetings of each class of target shareholders. • After the shareholder vote, the target will return to court to seek court orders approving the scheme.
Threshold to Reach 100%	To achieve 100% ownership, compulsory acquisition must be undertaken. To commence compulsory acquisition, the bidder must reach a 90% relevant interest.	For the scheme to be approved, a resolution in favour must be passed at meetings of each class of target shareholders by both: • 75% of the votes cast on the resolution • More than 50% in number of the target shareholders voting on the resolution (in person or by proxy) Typically, the bidder and its associates will not vote on the resolution to approve the scheme.

Key Differences continued

	Takeover Bid	Scheme of Arrangement
Outcome	Once the offers become unconditional, the bidder will own the shares that have accepted the offer. It is typical that the offer will become unconditional before the bidder can reach a 90% relevant interest, which creates a risk that the bidder will hold a less than 100% interest at the end of the offer.	If the scheme is approved, the bidder will acquire 100% ownership of the target, or if the scheme is not approved the bidder, they will not acquire any target shares. This makes schemes the preferred way to effect a 'takeover where reaching 100% ownership is the goal.
Terms	Any form of consideration, including cash, shares or both Can be subject to conditions Offers must all be on the same terms, including the offer price Offer terms cannot accommodate additional features, such as asset transfers, demergers or capital reductions	• Any form of consideration (including cash, shares or both) • Can be subject to conditions • Flexibility to treat target shareholders differently, but this must be disclosed and may create separate shareholder classes requiring separate votes • Scheme terms can accommodate additional features, such as asset transfers or demergers, and capital reductions
Disclosures	Bidder prepares a bidder's statement that includes the terms of the offer and all other information known to bidder that is material to target shareholders. Target responds with a target's statement that contains the target directors' recommendation and all other information known to the target that is material to target shareholders. The target's statement usually includes an independent expert report valuing the target shares.	The target sends to its shareholders a scheme booklet that contains all information known to the target and the bidder that is material to target shareholders. ASIC expects the scheme booklet to effectively contain the same level of disclosure as a bidder's statement and the target's statement combined. The scheme booklet usually includes an independent expert report valuing the target shares.
Timetable	Typically takes a minimum of two to three months from offer announcement to close, but exact timing will depend on the number of extensions of the offer.	Typically, the process will take three to four months from announcement to implementation.
ASIC Oversight	ASIC does not review a bidder's statement or target's statement before it is sent to target shareholders, but it may apply to the Takeovers Panel for declarations of unacceptable circumstances where such documents are deficient.	ASIC reviews scheme booklets before they are submitted to the court to be approved for despatch to shareholders. The court must not approve a scheme unless ASIC has provided a statement of no objection (or the court is satisfied that the scheme has not been proposed in order to avoid the takeover laws in Chapter 6 of the Corporations Act).

Advantages and Disadvantages

Schemes of arrangement are now the preferred way in which takeovers of Australian-listed companies are effected, particularly where reaching 100% ownership is the goal.

The popularity of schemes is due to a number of key advantages that schemes offer, compared to takeover bids:

- **All-or-nothing outcome** – There is the certainty of obtaining 100% ownership if the scheme is approved. In a takeover bid, there also is a risk that the bidder will hold a less than 100% at the end of the offer.
- **Lower approval threshold** – The voting thresholds for shareholder approval of a scheme (75% of votes and 50% of shareholders) are considered to be easier to achieve than the 90% of all shares required to commence compulsory acquisition following a takeover bid.
- **Flexibility** – The ability to accommodate additional features, such as asset transfers, demergers or capital reductions.
- **More certain timetable** – There is little difference in the timing to reach 100% ownership for a scheme or an off-market takeover bid, but a scheme offers a more certain timetable, given that a takeover bid will typically require multiple extensions of the offer period.

Schemes have their limitations, given that they have several disadvantages when compared to takeover bids:

- **Price increases are more difficult** – The price can be increased before the scheme is voted on by shareholders, although this is more difficult than under a takeover bid, as it requires court approval, an adjournment of scheme meeting and supplementary disclosure.
- **Target role** – The inability to use schemes to effect a hostile transaction, given the need for target support, and the target's control of the scheme process limits the circumstances in which they can be used.
- **Pre-bid stakes can be disadvantageous** – A pre-bid stake in the target held by the bidder can be an advantage in a takeover bid, as it can make it easier for the bidder to reach control. However, in a scheme, a bidder cannot vote any target's shares it holds the same class as the other target shareholders, which enlarges the effective voting power of any target shareholders who may vote against the scheme.
- **More approvals are required** – A scheme requires two approvals from the court and an approval from target shareholders. There is also a more formal oversight role for ASIC in schemes. This increases execution risk, compared to a takeover bid.
- **Cost** – Given the approvals required from both the court and target shareholders and greater interaction with ASIC, a scheme is generally more expensive to undertake than a takeover bid. While the target bears more of those costs than the bidder, these costs will be indirectly borne by the bidder once the bidder owns the target.

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