Structuring Public Takeovers in the U.K.

Summary of key differences of a contractual takeover offer vs a scheme of arrangement

	Contractual Takeover Offer (Offer)	Scheme of Arrangement (Scheme)
Required approval level	Approval of an Offer only requires in excess of 50% of issued share capital.	Approval of a Scheme requires an approval level of 75% by value and a majority in total number.
Minority shareholders	As only over 50% approval is required – there is a possibility that there will be numerous minority shareholders remaining after the acquisition where acceptances representing 90% of issued share capital is not achieved.	There can be certainty with a Scheme that there will be no minority shareholders, if such a Scheme is approved by shareholders and sanctioned by the court.
Timetable for acquisitions	An offer will generally be quicker as only 50% approval is required. However, the timetable for an Offer can also potentially be longer, particularly if the bidder is seeking to acquire 100% ownership, as the timetable will be affected by the ability to compulsorily acquire shares and the legislative requirements to do so.	Generally a longer acquisition time, but if a bidder is trying to acquire 100% of a control with a Scheme, this can be quicker due to the compulsory acquisition procedure to be followed. Further, when the Scheme becomes effective, the bidder immediately has acquired 100% of the shares in the target.
Court requirements	No court sanctions required.	Court sanctions are required. This can potentially allow for objections to be brought before the Court.
Flexibility to change terms of bid	There is greater flexibility with an Offer to change terms after sending Offer documents.	There is very little flexibility to change terms (except the price) once the Scheme documents have been sent, unless the acquirer wants to restart the Scheme timetable.
Control of bid process	As the Offer documents are sent by the bidder, the bidder is in control of the Offer process.	Conversely, scheme documents are sent by the target company, and the bid process is control by the target company.
Prospectus requirements	An FCA-approved prospectus may be required in some circumstances.	No prospectus required.
Effect of market purchases	Market purchases of shares can be used by a bidder to increase the chances of a successful acquisition.	Market purchases of shares are of no effect in a Scheme, as the shares already owned by the bidder do not form part of the class that approve the Scheme.

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Effect of irrevocable undertakings	Any shares that are acquired pursuant to irrevocable undertakings can be counted towards any acceptance conditions and the compulsory acquisition test increasing the likelihood of a successful acquisition.	Any shares that are acquired pursuant to irrevocable undertakings could in effect reduce the number of shares available in respect of the required 75% approval and could in effect make the acquisition more difficult.
Overseas considerations	Bidders need to be aware of overseas securities legislation that may be applicable to any Offer made in certain jurisdictions as they will apply.	A Scheme will usually give rise to fewer overseas securities requirements where there are overseas shareholders, as it simply involves a shareholder vote rather than an investment decision.
Satisfaction of conditions	Under the Takeover Code all conditions in the Offer must be satisfied or waived by day 60 of the acquisition timetable.	While there are no specific timing requirements, all conditions for the Scheme must be satisfied or waived at the time of the court hearing to sanction the Scheme.
Hostile or contested bids	It is possible for an Offer to be hostile or contested, making the acquisition process more complicated.	By virtue of the Scheme mechanics as they work in practice, a Scheme is not generally used where there is a hostile bid. However, there are rare cases of contested Scheme situations.
Issue of lost and untraceable shareholders	If shareholders become lost or untraceable – a court order is required to include those shareholders in the 90% required to compulsorily acquire the minority.	As the required approval level for a Scheme is 75%, lost and untraceable shareholders would not be an issue in a Scheme.
Disclosure requirements	The Takeover Code sets outs the disclosure required for both the bidder and the target.	In addition to the Takeover Code requirements, a Scheme also requires an explanatory statement as set out under the Companies Act (2006).
Financial assistance flexibility	Due to the provisions under the Companies Act (2006), it can be more difficult and require further steps for a target company to provide financial assistance to the bidder.	In a Scheme it possible to obtain court authorisation for acts of a target company that might otherwise be considered unlawful financial assistance.
Noncompliance with Offer documents	Noncompliance with the requirements of an Offer document or response document is a criminal offence.	The criminal offence for noncompliance with Offer and response /defence documents do not apply to a Scheme.

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