# WHAT NEEDS PROTECTING ON A P2P DEAL?

## IN OUR SURVEY OF THE DEAL LANDSCAPE FOR PRIVATE EQUITY BACKED PUBLIC-TO-PRIVATE TAKEOVERS (P2Ps), INTERLOPER RISK WAS A KEY DETERRENT FOR 44% OF RESPONDENTS.

While only 10% of P2Ps in the last three years have had public interlopers, deal protection concerns bite earlier in the P2P process – a leak announcement can put a Target "in play" and crater a deal.

The Takeover Code prohibits exclusivity arrangements and break fees – but here are five practical ways to make delivery of a P2P more certain.

Download **TO P2P OR NOT P2P: PRIVATE EQUITY AND PUBLIC TAKEOVERS IN THE AFTERMATH OF COVID-19** report here.

### NIMBLY NAVIGATING THE ANNOUNCEMENT REGIME

- **Active consideration:** Takeover Code regulation begins when consideration of a deal passes from the merely routine to where more serious effort is being devoted to it – e.g. Investment Committee approval in principle or engagement with financial advisers.
- **Announcement and PUSU Regime:** following active consideration, any untoward price movement or press speculation may require public naming of offeror and start the 28 day "put-up-or-shut-up" clock **(PUSU)** by when a firm offer must be launched.
- **Not as draconian as it sounds:** the Panel grants dispensations liberally and a tight deal team mitigates leak risk. If commercial terms are agreed, the PUSU deadline will always be extended if the Target consents.

### PREPARATION AND SPEED

- **Prepare early:** scope the takeover process in advance: 55% of respondents to our survey identified "deal complexity" as a concern and 66% had no recent P2P experience.
- **Speed minimises leak risk:** carry out due diligence on public information as part of the initial deal evaluation and settle deal strategy early to minimise leak exposure.
- **The Rule of Six:** an offeror may only speak to a maximum of six parties outside its advisory team prior to an announcement. This includes debt funders and significant shareholders – use these slots wisely.

## IRREVOCABLE UNDERTAKING STRATEGY

- **Target cannot commit to an offer:** the Code prohibits imposing any contractual obligations on a Target, save in very limited circumstances – no exclusivity, break fee or conduct restrictions possible.
- **Shareholders can commit to an offer:** obtain 'hard' irrevocables from management to accept the offer which cannot fall away, and 'soft' irrevocables from key shareholders which only fall away if a competing bid clears an agreed hurdle price – and provide a right to match.
- **Timing of irrevocables:** these commitments can only be obtained shortly before launch of a firm offer so don't act as early stage deal protection.

## STAKEBUILDING

- **Blocking stake:** obtaining a significant stake in the Target could deter interlopers, and lower the average price paid for the Target's shares.
- **Price setting rules:** stakebuilding in advance is disclosable and can set a floor for future offer price – be cautious in falling markets.
- **Limited use for scheme of arrangement:** schemes are the default option for implementation of a bid; any stake acquired will not count towards the 75% approval threshold for approval of a takeover by way of scheme.

## MANAGEMENT TERMS

- **Impact on due diligence:** all due diligence materials received must be shared with competing bidders; backing a strong management team can reduce the need for diligence and minimise exposure to competitor-interlopers on DD 'fishing expeditions'.
- **Timing of management's deal:** if management's equity roll over deal is even partly-negotiated it will require disclosure and approval by 50+% of independent shareholders – either conclude in advance or leave until post completion. No half-way houses.
- **Speed of implementation:** increasingly management deals are being delayed until post-completion to aid speed of implementation – how to provide comfort in practice to management is key.