







# Public to Private Deals in Finland

## Six key things you need to consider

Here are the key things you need to consider in a public to private deal (“P2P deal”) in Finland. Expert advice is required in all P2P deals.

-  → Structure and Timeline
-  → Secrecy and Disclosure
-  → Financing
-  → Diligence
-  → Special Deals and Management Incentivization
-  → Deal Protections



# Structure and Timeline

## In Finland, P2Ps are typically implemented by way of a voluntary tender offer.

Under a voluntary tender offer, the bidder makes a takeover bid to target shareholders to acquire the shares in the target company. The bidder typically first contacts the Board of Directors of the target company, which resolves either to oppose the takeover bid or to cooperate with the bidder. If the Board of Directors of the target company has resolved to cooperate with the bidder, the bidder will be granted access to conduct a due diligence review and the bidder and the company enter into a combination agreement, after which the takeover bid is announced and a tender offer document is approved by the Finnish Financial Supervisory Authority (the “FFSA”). Once the FFSA has approved the tender offer document, the takeover bid is launched with an offer period of 3–10 weeks (extensions possible for pending regulatory approvals). The squeeze-out process may be commenced if the bidder exceeds the shareholding of 90 percent of the target shares. Once the squeeze-out process is completed, the bidder may apply for delisting of the target shares.

The timeline for the voluntary tender offer is typically approximately 6–9 months, calculated from the first contact with the Board of Directors of the target company until delisting of the shares. The timeline depends largely on the process to obtain regulatory approvals.





# Secrecy and Disclosure

## Inside information

Information prior to a potential takeover bid may qualify as inside information and must be treated strictly confidential. The bidder should therefore limit disclosure and put appropriate procedures in place to reduce the possibility of a leak and avoid a premature announcement of a potential takeover. The circle of insiders should be limited as far as possible on a need-to-know basis.

## Announcement of the decision to launch an offer

The decision to launch a takeover bid must be made public immediately and communicated to the target company.

The press release regarding the announcement of the takeover bid must include matters of which the bidder is aware and that are essential for the evaluation of the bid and its merits. These include, among others:

- Information on the bidder
- The securities that are subject to the bid
- Information on the target's securities already owned or otherwise controlled by the bidder
- The material terms and conditions of the bid
- Information on the financing of the bid
- Information on the reasons for the bid
- Estimate of the date when the offer document will be made public
- Information of necessary regulatory approvals
- Estimate of the duration of the takeover bid process





# Financing

## Certain funds

“Certain funds” is market practice in Finland, but not required by the Finnish takeover rules. “Certain funds” is also typically required by the Board of Directors of the target company as a condition for its recommendation.

Pursuant to a mandatory provision of the Securities Markets Act, prior to making a takeover bid public, the bidder must ensure the availability of necessary financing. If external debt financing is required to finance the bid, generally. It is sufficient that the finance provider has made a commitment decision regarding the financing and that the amount of financing and the principal terms and conditions have been agreed. A unilateral letter of interest or a letter of strong interest on behalf of an individual finance provider alone would not constitute sufficient proof of the availability of financing. The availability of financing may be agreed on a conditional basis by, for example, including a “no material adverse change” condition. Conditionality must, however, be disclosed in the announcement press release and in the tender offer document to the extent necessary for evaluation of the takeover bid.

## Club deals

Under Finnish takeover regulations, any acquisitions by consortiums are permitted. All consortium members and their controlled affiliates are deemed “persons acting in concert.” Any acquisitions of target securities by such persons are deemed equivalent to acquisitions by the bidder for the purpose of calculating the minimum price for the tender offer. Thus, in a club deal, the acquisition of only one share in the target company by one of the other consortium members at a price higher than the offer price would automatically lead to an increase in the offer price, which would then affect all consortium members in proportion to their consortium quota. Therefore, careful thought needs to be given to what extent consortium members and their affiliates qualify as “persons acting in concert.”





# Diligence

## Allowing due diligence review

In connection with the preparation of a potential takeover bid, the bidder typically requests the possibility to conduct a confirmatory due diligence review in the target company in order to acquire more information about the company. In Finnish practice, the due diligence review is usually allowed in a situation where permitting the review is considered to be in the interest of the shareholders. The Board of Directors may not, however, allow a due diligence review if it deems the proposed bid not to be of a serious nature or not to be in the interest of the shareholders.

## Nature and scope of information to be provided

The scope of the due diligence review depends on the circumstances of each individual situation, possible competition law concerns and the possibility that the takeover bid will never be completed. The Board of Directors must strive to protect the interests of the company when making a decision regarding the scope of information to be provided to a certain bidder. It is always advisable to document the due diligence process carefully, so the target company may be left with records that is verified afterwards, evidencing what information was given in the due diligence review, and to whom and when it was given.





# Diligence (cont'd)

## Confidentiality and insider issues

If the Board of Directors allows a due diligence review, it must ensure that it pays appropriate attention to confidentiality and insider issues. The bidder must sign a non-disclosure agreement with the target before commencing the review.

The Board of Directors also has the obligation to ensure that inside information is managed appropriately during the due diligence process, especially if the review is conducted during a period of time when there is, in addition to the potential takeover bid, other pending insider projects or other insider information regarding the company. The target company must notify the bidder of the insider nature of the information and the legal obligations relating to it, as well as take care of the confidentiality aspects and appropriate insider register arrangements to ensure that the information remains confidential. If the bidder receives inside information in connection with the due diligence review, as a rule, the bidder may not launch the bid or otherwise trade in the securities of the target company before such information has been made public. Usually, the bidder requires that the target company undertakes to make public such information by the time the takeover bid is launched because otherwise the bidder holding inside information would prevent the launching of the takeover bid.





# Special Deals and Management Incentivization

Special deals are generally prohibited as Finnish law does not allow unequal treatment of the target company shareholders. Management incentives and the basis for such must be disclosed in the tender offer document. In addition, it must be considered whether any member of the Board of Directors receiving an incentive is disqualified from considering the takeover bid.





# Deal Protections

In addition to offer conditions (e.g., minimum acceptance threshold), it is common practice in Finland for bidders to enter into certain arrangements to protect the takeover bid. These include:

- **Combination agreement between bidder and the target company**—an agreement signed immediately before the announcement of the tender offer outlining the key terms of the tender offer, certain representations and warranties and undertakings and the target company's obligation to facilitate the regulatory approval process and the tender offer;
- **Irrevocable undertakings**—binding commitments (often subject to certain conditions relating to superior competing offers) under which shareholders irrevocably commit to tender their shares into the offer;
- **Share purchases prior to announcement**—opportunity for the bidder to block/deter an interloper, particularly where combined with irrevocable undertakings (10 percent holding will block a competing bidder's ability to do a squeeze-out after the bid); and
- **Share purchases following announcement**—opportunity for the bidder to block/deter an interloper, particularly where combined with irrevocable undertakings (10 percent holding will block a competing bidder's ability to do a squeeze-out after the bid).





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