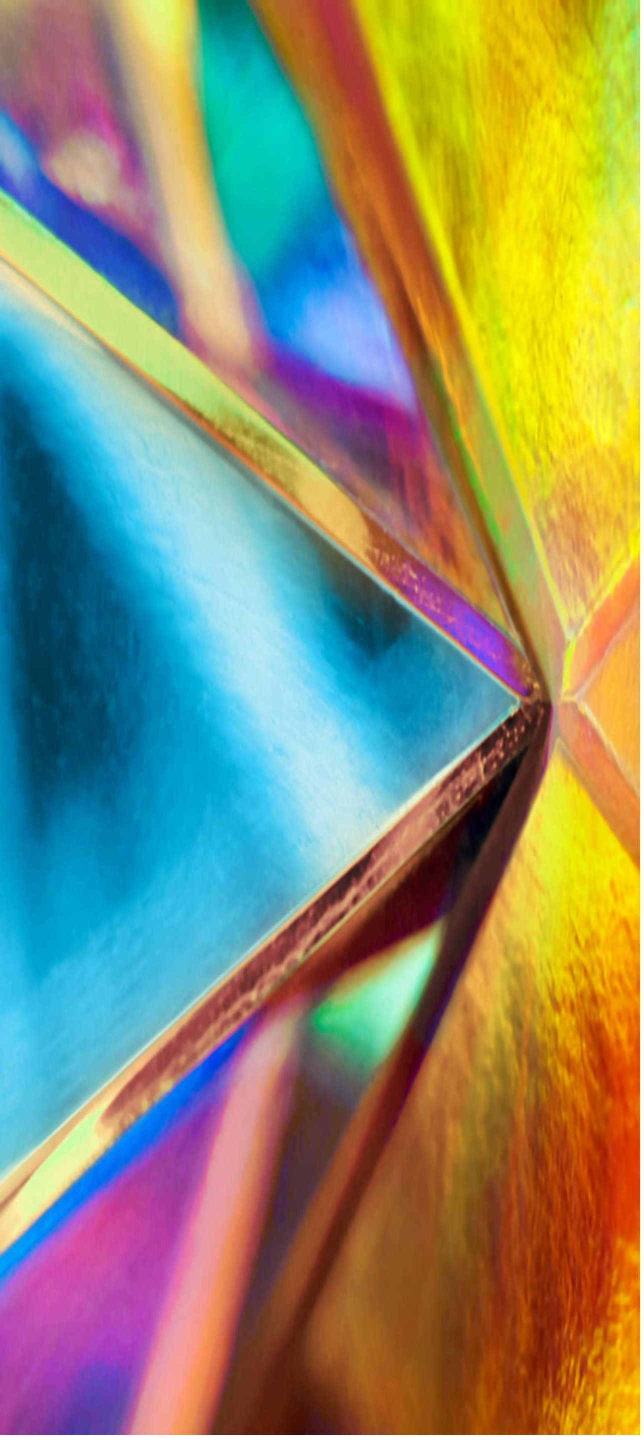

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Public to Private Deals in Sweden

Six key things you need to consider

The Swedish market in some respects follows and in others deviates from the UK market, requiring expert advice to navigate. Here are the key things you need to consider as an investor in a public to private deal ("P2P deal") where Swedish takeover rules apply.

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

Structure and Timeline

In Sweden, there are two main ways to implement a P2P deal and to gain access to target – a public takeover offer or a legal merger

Public takeover offer (“PTO”) combined with a subsequent squeeze-out of the minority shareholders of target

- Key Requirements – 90 percent of outstanding target shares after PTO for the squeeze-out.
- Timeline – 3–4 months for PTO plus 9–24 months for squeeze-out = approx. 12–28 months total (incl. preparation).
- Key Advantage – established route to sole ownership and full control of target.

Legal merger and delisting

- Key Requirements – shareholder approval by 2/3 majority of both the votes cast and the shares represented at the shareholders meeting in target—assuming that both the bidder and target are public companies listed on EEA regulated markets—and more than 50 percent of consideration represented by shares in the bidder. Only practical where the absorbing entity is listed on an EEA regulated market or where the dissolving entity is not listed on a regulated market, but a multilateral trading platform.
- Timeline – 3–4 months to get shareholders meeting approval plus 3–4 months post-approval to closing = approx. 6–8 months total (incl. preparation).
- Key Advantage – lower threshold to get control of target rather than through squeeze-out.

Structure and Timeline (cont'd)

Squeeze-out

Squeeze-out of minority shareholders after a successful PTO can be done against compensation for the minority shareholders. Squeeze-out is effected through arbitration and requires 90 percent of the outstanding target shares.

The bidder may obtain so called "advance possession" of the minority shares, where the bidder becomes the legal owner of the minority shares and becomes entitled to exercise all rights that vest in a shareholder before final redemption (5–6 months after commencement of squeeze-out proceedings). In order to be awarded advance possession, the bidder must provide (and the arbitral tribunal must approve) collateral in favour of the minority shareholders as security for the redemption sum (including interest)—normally covering 125 percent of the likely redemption sum (including interest). The redemption sum will typically be the price for the target shares paid in the offer, plus interest.

Delisting

The delisting of target stock from the market is effected by an application of the target's board to the respective stock exchange. Delisting normally requires an acceptance level exceeding 90 percent. The delisting application can be filed directly after the expiry of the acceptance period of the PTO and the offer being declared unconditional. Nasdaq Stockholm normally delists the target shares about 2–4 weeks after the announcement of the decision to delist. Delisting may also be postponed where there is extensive trading in the target's shares.

Secrecy and Disclosure

Inside information

Information prior to a takeover may qualify as inside information and must be treated as strictly confidential. The bidder should therefore establish appropriate internal documentation. If the bidder intends to contact third parties at an early stage, this should be done exclusively on the basis of a previously concluded non-disclosure agreement reflecting the specifics of P2P deals. The circle of insiders should be limited as much as possible on a need to know basis, but no strict "rule of six" applies.

When target is involved it may generally choose to delay disclosure of information on the process, provided that there are no leaks.

Announcement of the decision to launch an offer

As soon as the bidder has decided to launch an offer to the shareholders of the target, it must publish this information immediately.

There is no equivalent to the UK "active consideration" concept, but the Swedish Securities Council (the equivalent to the UK Takeover Panel) may impose a "put up or shut up" deadline for a potential bidder to present an offer where the bidder makes a leak announcement of a possible offer, or no leak announcement has been made, but the target would be hindered in the conduct of its affairs for longer than what is reasonable.

A leak announcement—in the form of a separate press release—may (but is not required to) be issued by anyone considering submitting an offer who knows or has a legitimate reason to believe that information about the offer has been leaked or may be leaked. The announcement is often made by the target rather than by the bidder—especially where the target has been approached as the target may be required to make such an announcement when conditions to delay disclosure of inside information regarding the offer no longer exist. Pre-announcements of a potential offer are otherwise prohibited.

Financing

Certainty of funds

There is no UK “cash confirmation” equivalent, but the bidder must make certain that any cash consideration can be paid in full and take reasonable steps to ensure payment of other forms of consideration (incl. guarantees for equity raisings) before launch and throughout offer period (incl. reasonable extensions). Only conditions for payment of the external financing that have been stated as conditions for completion of the offer may be invoked by the bidder under the offer, and such conditions must be material to the bidder’s acquisition of the target and objectively verifiable.

Transactions outside the offer and acting in concert

The bidder may be required to adjust the terms of the offer and the form of consideration if more favorable terms and alternative forms of consideration have been offered in transactions executed outside the offer but during the period starting six months before the announcement of the offer and ending six months after settlement.

Acquisitions outside the offer by persons related to/acting in concert with the bidder are deemed equivalent to acquisitions by the bidder for the purpose of determining the minimum price and type of consideration required. Thus, where an offer is made by a bid consortium, the acquisition of only one share in the target by one consortium member at a price higher than the offer price could force an increase of the offer price, which would then affect all consortium members in proportion to their consortium quota.

Diligence

Diligence in P2P deals typically starts with the review of information that is publically available due to general ongoing disclosure obligations of the target under applicable capital market rules (“outside-in DD”). If the bidder proceeds to make a formal approach to the target board by submitting an indicative non-binding bid letter, it will normally include a request for further due diligence (“confirmatory due diligence”) in the letter.

Access to confidential information of targets is normally more limited in P2P deals compared to private M&A deals and ultimately depends on what target management, in its discretion, deems to be in the best interest of the company’s shareholders, whether the bidder intends to buy shares in the market ahead of launch and whether information classifies as inside information. In practice, this means that the target can choose to refuse access altogether or allow only limited due diligence depending on the potential bidder, the target board’s view of the transaction logic and the sensitivity of the information.

The target should, as a main rule, treat all potential bidders consistently, but inconsistent treatment may be acceptable where, for example, one bidder is not deemed serious or is a competitor to target.

Special Deals and Management Incentivization

All shareholders must, as a starting point, be treated equal. Offering individual shareholders a higher price, the opportunity to rollover their existing shareholding into the bidder structure or other benefits are generally prohibited.

Existing shareholders may be invited to join a bid consortium, formed by several bidders to make a joint offer, where there are grounds to treat such shareholders of the target more favorably. This will be assessed on a case-by-case basis mainly based on the contribution by each member of the consortium in terms of financing or other values in the post-bid environment.

Any incentives to be offered to management post-bid must be approved by the target board ahead of launch and disclosed in the announcement press release and offer document. Such incentives also may only be offered to management in their capacity of employees and not as shareholders. If members of the board or management participate as bidders, they will be conflicted and thus may not handle anything relating to the offer on behalf of the target, and special management buy-out rules apply.

Deal Protection

Offer-related arrangements—such as exclusivity or break fees vis à vis the offeror—that may detrimentally affect competing offers are generally prohibited, other than in connection with mergers of equals. The bidder may, however, increase the likelihood of success by other means:

- **Irrevocable undertakings** – soft (conditional) or hard (unconditional) binding commitment under which shareholders irrevocably commit to tender their shares into the offer. Any board or management members entering into irrevocables will be conflicted. Non-binding declarations of intent will not cause conflicts and may be used as an alternative.
- **Board recommendation** – the board is required to announce its opinion on the offer no later than two weeks before the end of the acceptance period. The board's statement has, historically, been of material importance to the outcome of an offer. A bidder may therefore seek to have the target board recommend the offer from the outset to increase the likelihood of success.
- **Stakebuilding** – the bidder may acquire shares in or off the market outside the offer to increase the likelihood of success. The insider trading prohibition, notification requirements when reaching certain shareholding thresholds, minimum pricing rules and risk of being stuck with an undesirable shareholding if the offer fails need to be considered. Stakebuilding is fairly uncommon.

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