

M&A STANDPOINT: COMMITTED TO THE DEAL

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Legal Briefings - By **Malcolm Lombers**

POUs can help to navigate political uncertainty and to secure the support of target boards and wider stakeholders, but in our view, future use will remain rare.

The Takeover Code's post offer undertakings (POU) regime is designed to facilitate the giving of specific, objective commitments that are legally binding and enforceable, and which could not be accommodated by private contractual arrangements or relevant undertakings to regulatory authorities.

Softbank's recent £24 billion acquisition of ARM, a leading UK technology company, illustrates how this new public M&A tool can be deployed, allowing bidders to navigate with political uncertainty with binding commitments to invest in the UK.

POUs will not become a common feature of UK public M&A. This first deployment of POUs, on which we advised the UK Takeover Panel, highlights how bidders can harness governmental and community interest in cross-border M&A but also why, in our view, POUs will remain rare.

POUs offer flexible innovative takeover technology to facilitate obtaining crucial political and wider stakeholder support. Whilst in the case of ARM they were used to secure UK Government support for a recommended takeover, in future they may provide the keys to unlock hostile situations, by allowing bidders to make binding commitments to wider stakeholders, so enabling bidders to apply further focussed pressure to a target board.

21st Century Fox's US\$11.7 billion current offer for Sky (on which we are advising Sky) illustrates the continued role for statements of intent. 21st Century Fox made clear that its intention to maintain the Sky HQ, complete a US\$1 billion investment programme at the site as well as the maintenance of, and investment in, Sky's technology hub and the creative community in the UK were intention statements, not POUs.

Please click [here](#) to read more.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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