Tender Offer

What is a Tender Offer; Definition of a Tender Offer

Definition 1

A bidder makes a general [offer](http://www.corporate-actions.net/Offer). The offer is made [publicly](http://www.corporate-actions.net/The%2BPublic) and directly to a [firm's](http://www.corporate-actions.net/Firm) [shareholders](http://www.corporate-actions.net/Shareholder) to [buy](http://www.corporate-actions.net/Buy) their [stock](http://www.corporate-actions.net/Stock) (so not via the board of directors of the target company). The price (paid to the shareholder in cash) is usually above the current market price.

Definition 2

A tender offer may be made by a firm to its own shareholders to reduce the number of outstanding shares, or it may be made by an outsider wishing to obtain control of the firm. The offerer states a price at which it is willing to buy the shares. Shareholders wishing to take up on the offer, agree to sell their shares at the offer price.

Definition 3

An [offer](http://www.corporate-actions.net/Offering) to [buy](http://www.corporate-actions.net/Buy) some or most of the [stock](http://www.corporate-actions.net/Stock) in a [publicly-traded company](http://www.corporate-actions.net/Publicly-Traded%2BCompany) directly from [shareholders](http://www.corporate-actions.net/shareholders) for a price well above [fair market value](http://www.corporate-actions.net/Fair%2BMarket%2BValue). A tender offer may be made by the company's management in a bid to prevent a [hostile takeover](http://www.corporate-actions.net/Hostile%2BTakeover).

Definition 4

When a corporation or other investor offers to buy a large portion of outstanding shares of another company, called the target company, usually at a price higher than the market price, it is called a tender offer.

A tender offer is often part of a company trying to take over another company. Current stockholders, individually or as a group, can accept or reject the offer.

Definition 5

A tender offer is a public, open offer or invitation by a prospective acquirer to all [stockholders](http://www.corporate-actions.net/wiki/Shareholders) of a [publicly traded](http://www.corporate-actions.net/wiki/Public_company) [corporation](http://www.corporate-actions.net/wiki/Corporation) (the target corporation) to tender their [stock](http://www.corporate-actions.net/wiki/Shares) for sale at a specified price during a specified time, subject to the tendering of a minimum and maximum number of shares. The details of the offer are often announced via the media.

Definition 6

An offer to purchase some or all of shareholders' shares in a corporation. The price offered is usually at a premium to the market price.

Definition 7

A takeover bid in the form of a public invitation to shareholders to sell their stock, generally at a price above the market price.

Definition 8

Definition of the Securities and Exchange Commission (SEC):

<http://www.sec.gov/answers/tender.htm>

Types of Tender Offers

From a shareholder's perspective a tender offer is always a [voluntary corporate action](http://www.corporate-actions.net/Events.html). However, from a bidder's perspective, it can be mandatory to make an offer.

Mandatory

Mandatroy Tender Offers are offers whereby the offerer is required (by law) to make an offer for the rest of the shares of the target company.

Reasons:

A majority stakeholder could use the right to vote at the AGM in his own advantage at the expense of other shareholders. For that reason, if the offerer has reached a certain stake in the target company and has gone over certain thresholds (in certain jursidictions it might for example become mandatory to make a bid for the rest of the shares once a 25% stake has been reached) it has to make an offer for the rest of the shares.

Voluntary

A company can chose to make an offer on a voluntary basis.

Besides offers being made voluntarily or mandatorily, there are several types of tender offers:

Friendly Tender Offer

When an offer is made for the outstanding shares of a target company, the board of directors usually is being informed about the imminent bid by the offerer first. It can then advise it's own shareholders whether to accept the offer or to reject it.

In case the board of the target company recommends it's shareholders to accept the offer, the offer is called a friendly offer.

Hostile Tender Offer

In case the offerer does not inform the board of the target company of the imminent publication of its bid, or if the board thinks the offer price is too low and the offerer still continues to publicize the bid, the offer is called hostile.

Creeping Tender Offer

In the United States Tender Offers are regulated by the Williams Act (see more below). Other countries in the world have similar acts. In these legislations, the law sets the rules on what is allowed and what not when it comes to Tender Offers.

In a creeping Tender Offer, investors or a group of individuals adopt a strategy to get around these rules. Typically a group of individuals try to gradually acquire target company shares in the open market. Often, the ultimate goal of a creeping tender offer is to acquire enough shares of the stock to have enough interest in the company to create a voting bloc at the target company's AGM.

With a creeping tender offer, the offerer(s) will attempt to circumvent the legal requirements and quietly go about purchasing shares from different shareholders. Only once a substantial number of shares have been acquired with the group do they comply with filing the proper documents with the SEC. The result can be that the target company finds itself in a hostile takeover bid before there is a chance to prepare themselves.

Exclusionary Tender Offer

In most countries this type of tender offer is forbidden. Under this scenario a bidder would offer to purchase outstanding shares from certain shareholders only while excluding others.

Mini Tender

An offer to purchase less than 5% of a company's stock directly from current investors. These types of Tender Offers are not regulated by the Securities Exchange Act and for that reason there is no requirement for disclosure.

Mini Tenders often carry high risk, because other than in a normal Tender Offer where a bidder often aims to take over the target company, in a mini tender it is not always clear what the real intentions of the offerer are. For more info on the problems surrounding minitenders please refer to <http://www.sec.gov/divisions/marketreg/minitenders/sia072401.htm>

Partial Tender Offer

An offer to purchase shares of a company, but not all of the shares.

Self Tender

An offer from a firm to its own shareholders to buy some or all of the shares. Also known as a buy-back offer. Self Tenders are sometims called in order to prevent a (hostile) Take Over or to make it more difficult.

Two Tier Tender Offer

The acquiring company will make a Tender Offer to obtain voting control of the target company. In a second stage they will try to purchase the rest.

Process of Tender Offers

The process of a Tender Offer can be described using the following steps:

1. Bidding Company to form strategy about expanding by acquiring other companies

Most companies aim to expand their businesses. Expansion can be realised by organic growth, or by buying other companies. Often there are a lot of consultants involved in generating a strategy for expansion, like management consultants, legal consultants, financial consultants like accountants and controllers.

2. Bidding Company to request approval from their own shareholders

3. Bidding Company to obtain the necessary financial means in order to finance any potential future purchases (often referred to as a warchest). The company can chose to finance any purchase by issuing debt or equity (in case of issuing extra equity, a company should first call a [Rights Issue](http://www.corporate-actions.net/Rights-Issue.html)).

4. Bidding Company to make a long list of potential targets

5. Bidding Company to make a short list of most attractive targets.

6. In case of a friendly Tender Offer, the Bidding Company should conduct a due dilligece. Due Dillligence involves looking closely at all of the target company's records: statutory financial statements, internal process controls, management accounts, budgets, analysis and projections/forecasts, contracts with employees, suppliers, customers and others, insurance policies etc. Underlying reason for conducting Due Dilligence is that nobody wants nasty surprises and to protect themselves, due dilligence offers the potential buyer a chance to ask the right questions and to discover any reasons not to invest in the target company.

7. Bidding Company to establish an Offer Price it is willing to pay for the target company.

8. Bidding Company to appoint Deal makers and a Paying agent to excecute the Tender Offer.

9. Paying Agent will prepare a Prospectus / Offer Document in collaboration with Legal Advisors.

10. Paying agent to register the offer with the relevant regulatory authorities and to announce the Offer Publicly.

11. All Parties like [Custodians, Broker Dealers, Financial Advisors](http://www.corporate-actions.net/Industry.html)to pass on the message to the ultimate beneficial owner of the securities being subject to the offer.

12. Beneficial Owners to make a decision as to whether to accept the offer or not and send instruction about their decision to the paying agent.

13. Paying agent to collate all instructions from all shareholders and calculate the result/success of the offer.

14. Paying Agent to publish the results officially.

15. Paying Agent to collect all tendered shares and to pay the cash proceeds to the beneficial owners

16. Beneficial owners to collect their money and to pay tax.

17. In case of a Take Over, Bidding Company to incorporate the target company in its books and legal entities.

18. Often Delisting of the Target Company.

Legislation

Williams Act (USA)

Senator Williams proposed amendments to the Securities Exchange Act of 1934 regarding Tender Offers. The Act requires that everybody who makes a Tender Offer discloses the source of the funds used in the offer, the purpose for which the offer is made, the plans the offerer has after the offer and its current contractual relationships with the target company to the Federal SECURITIES AND EXCHANGE COMMISSION (SEC)

For many years after the addition of this act in 1968, the provisions of this act helped to minimize the potential for the use of a creeping tender offer. Some key elements of the Williams Act is that shareholders must be offered the same price for their available shares. This means that if one shareholder is offered a particular price for their shares, the same investor or group of investors cannot offer a different shareholder a different price in order to attract a sale. Until the original price is rejected, the group cannot offer a higher price per share to a different shareholder.

Further provisions of the Williams Act require that any investor or group of investors attempting to acquire shares of stock must file all relevant details of their tender offer with the Securities and Exchange Commission and the company that is targeted. These details includes the price per share that is being offered.

The SEC's Rules in a Tender Offer:

These rules require bidders to:

* Disclose important information about themselves;
* Disclose the terms of the offer;
* File their offering documents with the SEC; and
* Provide the target company and any competing bidders with information about the tender offer.

The rules also give investors important protections, including the right to:

* Change their minds and withdraw from the transaction while the offer remains open;
* Have their shares accepted on a "pro rata" basis (if the offer is for less than all of the company's outstanding shares and investors tender too many shares); and
* Be treated equally by the bidder.

Legislation in other countries

All countries have similar laws to regulate proceedings around Tender Offers.

The Offer Document (Prospectus)

A Tender Offer must specify an Offer Price, the maximum amount of shares that will be purchased, the beginning and the expiriation dates of the offer and the last day when tendered stock can be withdrawn by shareholders.

!! !! Please note that there are almost always legal restrictions attached to the distribution of these documents !! !!

For that reason please download the document yourself by clicking on the following link:

<http://uk.fujitsu.com/fulloffer/>

Example of a Tender Offer

FUJITSU making an offer for Mandator (a Swedish Company, listed at the time at the Nordic Exchange OMX).

Summary: Fujitsu offered SEK (Swedish Krona) 3,00 per share Mandator (which according to the document represents a 28% premium over the closing price of Mandator Shares on the 5th of October 2007.

Just like the USA has the SEC, Sweden has the Swedish Industry and Commerce Stock Exchange Commitee that monitors if the offer is compliant with the Swedish Take over rules. The offer details were submitted to the commission.

Shareholder could accept the offer during the period commencing 11 October 2007 and ending on 31 October 2007. They could do so by completing an acceptance Form and sending it to the Agent who took care of the administrative parts of the process.

<http://uk.fujitsu.com/fulloffer/>

Paying Agent

For the technical and administrative parts of the process the offerer often appoints a so called [Paying Agent](http://www.corporate-actions.net/Industry.html). A Paying Agent often is a financial institution that is experienced with the process of Tender Offers. It will also take care of the cash settlement to the shareholders.

Effects on the Shareprice when a Tender Offer is announced

A lot can be said and written about the effects a Tender Offer has on the shareprices of both the bidding and the target company. More can be read on [Effects on the Shareprice](http://www.corporate-actions.net/Effects.html).

Tax Consequences of accepting an offer

[Taxation](http://www.corporate-actions.net/Tax.html) is depending on many factors including domicile and tax status of the shareholder who tenders its shares. Besides that there will be Double Taxation Treaties in place between several countries.

Shareholders are advised to ALWAYS check first with their own tax advisors about tax consequences for accepting the offer.