



M&A STANDPOINT: FORMAL SALE PROCESSES: A USEFUL TOOL TO SOLICIT OFFERS OR A LAST RESORT?

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Legal Briefings

FSPs were created to encourage a competitive and confidential sale process under the Takeover Code, but often they may signal that a company has run out of options. However, a number of companies have elected to launch FSPs in recent months, so when is an FSP the right choice for a company?

A formal sale process (FSP) is a sell-side sale process run by a public company which is similar to a private company auction, but subject to the UK Takeover Code.

Because they have often been undertaken by companies either in financial distress or which have reached the limits of their ability to operate independently (examples include companies in the oil and gas sectors), FSPs can be perceived by investors or the wider market as a sign of failure or surrender. There has however been a recent trend of companies using FSPs to run a competitive process where they have received multiple expressions of interest, demonstrating the wider potential of the process.

A key advantage of an FSP is that the Takeover Panel will usually grant dispensations from specific Code rules which may help to foster interest among prospective bidders.

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Robert Moore, Partner, and Antonia Kirkby, Professional Support Lawyer, at Herbert Smith Freehills discuss formal sale processes (FSPs) under the UK Takeover Code, including:

- how an FSP works
- what dispensations are available under the Code for an FSP and
- why an FSP might produce a better outcome for a company.

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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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