

# VIEW FROM THE TOP: HERBERT SMITH FREEHILLS PUBLISHES SURVEY OF ASX NON-EXECUTIVE DIRECTORS ON KEY TAKEOVER ISSUES

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News

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Herbert Smith Freehills has today published a survey of leading ASX non-executive directors exploring a range of key takeover issues.

These issues included:

- board preparedness and discretion in responding to change of control approaches;
- the role of third parties such as proxy advisers and private equity bidders;
- the legal and regulatory framework; and
- the interaction of COVID-19 with takeover situations.

The survey found that nearly 70% of respondents agreed that target boards treat approaches from private equity differently from other bidders, and only 19% of respondents considered that proxy advisers' influence in change of control situations was appropriate.

The survey follows on from similar research conducted five years ago in the takeovers book *Towns Under Siege*, published by Herbert Smith Freehills in conjunction with the Ross Parsons Centre at the University of Sydney.

The firm's latest survey highlights a number of shifts in perspective since 2016, including that:

- over 40% of respondents indicated that target boards do not have sufficient discretion in determining whether and when to publicly disclose approaches from potential bidders, versus just under 25% of respondents who responded to similar research in 2016;
- approximately 35% of respondents believed that the law and the Takeovers Panel unduly inhibit directors in exploring and entering into alternative transactions, up from approximately 20% in 2016; and
- approximately 40% of respondents considered that Australia's foreign investment rules strike the right balance between the protection of Australia's national interest and the economic benefits that can flow from change of control transactions, compared to approximately 50% in 2016.

Herbert Smith Freehills partner [Tony Damian](#) said, "It's a very active M&A market and this survey shows the perspective that boards bring to takeover situations. Importantly, the increasing role of activists, proxy advisers and superannuation funds in M&A is evident in the survey responses."

Herbert Smith Freehills senior associate [Amelia Morgan](#) added, "It was interesting to see that, despite the ongoing COVID-19 pandemic, a majority of respondents believe that companies can be reliably valued for change of control transactions, suggesting that companies have become accustomed to operating in this environment."

[Tony Damian](#) and [Amelia Morgan](#) recently led the Herbert Smith Freehills team advising Coca-Cola Amatil Limited on its A\$11.1bn (EV) acquisition by Coca-Cola European Partners plc.

The results of the survey can be found [here](#).

## 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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