

COMPANY UP FOR SALE – SUMMARY OF INITIAL CONSIDERATIONS ARISING ON PRIVATE & PUBLIC AUCTIONS, STRATEGIC REVIEWS, FORMAL SALE PROCESSES (PRACTICE STATEMENT 31)

	(1) Sale scenario	(2) Does an “offer period” commence? ¹	(3) Are offerors “outed” or publicly identified?	(4) Does the 28 day ‘PUSU’ deadline on offerors apply?	(5) Other announcement requirements	(6) Are any offer-related arrangements permitted?	(7) Can the Code company impose any conditions/restrictions on access to information by offerors?
1.	Strategic review announcement – sale ² not an option	No – however Executive will make enquiries of company as to the options being considered by the board	N/A [NB: Only relevant if circumstances change as outlined in column (5)]	N/A [NB: Only relevant if circumstances change as outlined in column (5)]	A further announcement may be required if:- (i) an offer is being or will be actively considered; AND (ii) there is rumour/ speculation about a possible offer.	N/A [NB: Only relevant if circumstances change as outlined in column (5)]	N/A [NB: Only relevant if circumstances change as outlined in column (5)]
2.	Strategic review announcement – sale ³ a possibility	Yes	Yes – any potential offeror with which the company is in talks or from which it has received an approach at the time of the announcement must be identified UNLESS the strategic review incorporates as FSP – in which case see 8 below. New potential offerors will not need to be identified UNLESS the company subsequently makes an announcement which refers to the existence of new potential offeror(s), except where the announcement is made after an offeror has announced a firm intention to make an offer for the company.	Yes – all identified potential offerors will be subject to the PUSU deadline. New potential offerors who have been identified will also be subject to the PUSU deadline.	(i) If at the time of the strategic review commencement announcement, the company is not in talks with any potential offeror or in receipt of an approach, this must be explicitly stated. [NEW GUIDANCE] (ii) If the conclusion of the strategic review is not to pursue an offer, an announcement updating the market of this conclusion is required.	No	Yes – the company can impose conditions on all parties invited to participate in an auction process; all such persons being regarded as “first offerors”. The company however cannot impose such conditions on (i) subsequent (potential) offerors who were not invited to participate; or (ii) those who were initially approached but who refused to agree to the conditions and therefore not participate in the auction.
3.	Private discussions (sale a possibility)	No (provided discussions are limited to a restricted number of people and	N/A	N/A	N/A	If and when any of these discussions lead to an offer, the usual Code	Yes – the company can impose conditions on access to information

¹ NB: This assumes that the company is not already in an offer period and that the relevant scenario listed in column (1) is the first possible Code relevant scenario/ event

² i.e. no reference to an offer, FSP, merger or search for a buyer for the company

³ i.e. specific reference to an offer, FSP, merger or search for a buyer for the company

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	with a restricted number of people	there is no leak – in which case see 5 below).				rules will apply and offer-related arrangements will not be permitted.	but only on the first offeror given access to information.
4.	Private discussions (sale a possibility) to be extended beyond a restricted number of people ⁴	Yes – the company will be required to make an announcement about such sale discussions.	Yes - any potential offeror with which the company is in talks with or from which it has received an approach, at the time of the announcement must be identified.	Yes - all identified potential offerors will be subject to the PUSU deadline.		No	Yes – the company can impose conditions on access to information but only on the first offeror given access to information (which may be one of the parties involved in the initial stage of private discussions).
5.	Private discussions (sale a possibility) – rumour or speculation about a possible sale	Yes	Yes – any potential offeror with which the company is in talks with or from which it has received an approach, at the time of the announcement must be identified. New potential offerors will not need to be identified unless the company subsequently makes an announcement which refers to the existence of new potential offeror(s) EXCEPT where the announcement is made after an offeror has announced a firm intention to make an offer for the company.	Yes - all identified potential offerors will be subject to the PUSU deadline. New potential offerors who have been identified will also be subject to the PUSU deadline.		No	Yes – the company can impose conditions on access to information but only on the first offeror given access to information (which may be one of the parties involved in the initial stage of private discussions).
6.	Private discussions leading to a strategic review	Yes, if a sale is an option	Yes (see 2 above) unless the strategic review incorporates a FSP, in which case see 8 below.	Yes – all identified potential offerors will be subject to the PUSU deadline.	(i) If at the time of the strategic review commencement announcement, the company is not in talks with any potential offeror or in receipt of an approach, this must be explicitly stated. [NEW GUIDANCE] (ii) If the conclusion of the strategic review is not to pursue an offer, an announcement updating the market of this conclusion is required.	No	Yes - the company can impose conditions on access to information but only on the “first offeror” given access to information (which may be one of the parties involved in the initial stage of private discussions).

⁴ This scenario is not specifically addressed in PS31 but is included for completeness. See also Practice Statement 20 referred to in the alert for guidance on other sale/ possible offer situations.

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7.	Private discussions leading to a FSP ⁵	Yes	No PROVIDED there has been no rumour/ speculation or untoward target company share price movement. In this case, the dispensations under the Code for FSPs (see 8 below) should be available, however the Executive will take account of all relevant factors including how far discussions with potential offerors have progressed at the time of the proposed announcement of the FSP and how the company plans to include new potential offerors in the the FSP. If there has been rumour/speculation or untoward share price movement, the Executive may still be prepared to grant the FSP dispensations – it depends on the circumstances at the time. Consultation with the Executive is required.	No - N/A with respect to offerors who have not publicly identified.	In PS 31, the Executive reminds parties and their advisers that if an announcement is REQUIRED under the Code, this should not be delayed in order for the company to seek the dispensations available for FSPs.	The Panel may grant a dispensation from the prohibition on offer-related arrangements where - see 8 below (column 6). Generally, the Panel will consider granting the dispensation(s) if it is satisfied that the board is genuinely putting a company up for sale.	Yes - the company can impose conditions on access to information but only on the first offeror given access to information (which may be one of the parties involved in the initial stage of private discussions).
8.	Announcement of a “Formal Sale Process” (FSP)	Yes	No – the Panel will normally grant a dispensation from ‘outing’ potential offerors – (i) with respect to those (potential) offerors who have agreed to participate in the FSP; and (ii) provided this is prior to the announcement by an offeror of a firm intention to make an offer for the company. Early consultation with the Executive is advised. The Executive will consider granting the relevant dispensation(s) where a sale of the company is genuinely being explored by the company.	No - N/A with respect to offerors who have not been publicly identified.	NEW GUIDANCE Pre-vetting: If dispensations from ‘outing’ and the PUSU deadline are sought, a draft copy of the announcement commencing the FSP should be sent to the Executive. Announcement contents: (i) Include phrase “formal sale process” in heading; (ii) text of announcement should make it clear that a FSP is being commenced; (iii) explain how the FSP will be conducted including: (a) who to contact; (b) what documentation interested parties will be required to enter into in	Yes – the Panel will normally grant a dispensation to permit the target company to enter into an inducement fee arrangement (subject to the terms below) – (i) with one offeror only who is participating in the FSP; and (ii) this is entered into at the time of that offeror’s firm intention to make an offer for the company. The relevant terms are:	NEW GUIDANCE In PS 31, the Executive notes that the target company is free to impose conditions on potential offerors who wish to participate in a FSP (and thereby benefit from the ‘outing’ and PUSU dispensations) to participation in a FSP and also to enter into different arrangements with different potential offerors participating in the FSP. The target company may not however require a potential offeror to agree to waive the provisions of

⁵ NB: This is where company initially starts having private discussions then wishes to publicly announce the commencement of a formal sale process

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					<p>order to participate; (c) indicative timetable;</p> <p>(iv) confirm if company is in discussions with or is in receipt of an approach from any potential offeror; and</p> <p>(v) explain that the Panel has granted dispensations from ‘outing’ and the PUSU deadline for any potential offerors who have or who subsequently agree to participate in the FSP for so long as it is participating in that process.</p> <p>Updates: Target company will be required to make announcements providing an update on the progress of the FSP. If the company decides not to proceed with the FSP, it must update the position promptly with an announcement.</p>	<p>(i) the value of the inducement fee must be <i>de minimis</i>; and</p> <p>(ii) the inducement fee must be capable of becoming payable only if an offer becomes or is declared wholly unconditional.</p> <p>In exceptional circumstances, the Panel may also be prepared to consent to the target company entering into other offer-related arrangements.</p>	<p>the Code (generally) as a condition to it participating in the FSP.</p> <p>EXCEPT that it may require the potential offeror not to request any information under Rule 21.3 (rule regarding equality of information to competing offerors) PROVIDED the undertaking applies only until the earlier of:- (i) the announcement by a third party of a firm intention to make an offer; or (ii) the conclusion of the offer period.</p>