LEWIS SILKIN

US/UK M&A: INTRODUCTION

One of the constant themes of mid-market M&A in the UK is the significant activity generated by US-based buyers acquiring British targets. The US is, by some distance, the single largest holder of foreign direct investments (FDI) in the UK (holding over US$800bn), and those investments represent around 12% of total global US FDI holdings and around 25% of total US FDI in Europe . That translates into a constant stream of acquisition activity here in the UK by both corporate and financial buyers from the US seeking either to expand their access to transatlantic markets or to access British technology and products.

As well as traditional cultural and linguistic comfort factors felt by US buyers in the UK, there are a number of key attractions the British economy has for US investors. British Government policies (regardless of short-term political currents) have long been aimed at ensuring that the UK economy is one of the most liberal in Europe, and its business environment is consequently extremely favourable to inward investment as borne out by the country being ranked 8th (out of 190 economies) in the World Bank's 2020 Doing Business guide. As well as a benign government approach, two further key factors the UK offers for inbound M&A transactions are a world-leading financial services sector (especially in banking and insurance) and a flexible and transparent legal framework similar to the US legal system. Now that a post-Brexit trade deal is in place, we also have far greater clarity on the new trading rules with the EU which – although not entirely frictionless as was previously the case – are tariff-free and also give the UK Government more flexibility on other aspects of trade and business policy.

Whilst the M&A process and deal practice in the US and UK have many similarities, there are nonetheless some important differences which a US-based buyer should take into account at an early stage in any transaction. It is important to be aware of them, both to secure the best deal terms at Letter of Intent stage and also to ensure that the M&A process runs smoothly through to closing. That latter aspect is especially important in the mid-market deal space where target businesses are often owner-managed with a seller transition period – it's essential in those circumstances to ensure that the relationship between buyer and sellers remains harmonious throughout the deal process. We sometimes see friction on deals due to misunderstandings regarding what is "standard" in the UK versus the US – for example, some aspects of typical US deal practice (such as warranty coverage) are more buyer-friendly than UK practice – but equally there are some points (e.g. liability caps) where the US approach can be a useful card to play for a well-versed US buyer.

In our UK/US M&A series we focus on some of these areas of difference in deal practice and terms, including:

- Risk allocation as between the parties and conditions to closing
- Pricing mechanisms, including the use of locked box structures as an alternative to closing accounts
- The scope of warranties and the legal basis of warranties and indemnification
- Disclosure and buyer's knowledge (anti-sandbagging) provisions
- A round-up of other deal points, including anti-trust and national security clearances, restrictive covenants, funds flow, closing opinions and the execution of documents

Lewis Silkin regularly works with US financial and corporate buyers on M&A deals across a wide range of sectors on UK domestic and cross-border transactions. We'd be delighted to discuss any questions you may have regarding UK deal practice at an early stage in any discussions you may be having in relation to possible UK acquisitions.

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