

ACQUISITION STRATEGIES



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ENSURE THE TRANSACTION RUNS SMOOTHLY AND PAY THE RIGHT PRICE BY FOLLOWING THESE TEN TIPS



1 RESEARCH THE MARKET PLACE

An acquirer should complete as much research as possible before approaching a target. Knowledge of the industry, the market, the target and its competitors is vital. Speak to corporate finance advisers for specialist industry knowledge, as well as to lawyers, and investigate any opportunity on their books.

Conduct a SWOT (strengths, weaknesses, opportunities, threats) analysis of the target and industry to understand the possible opportunities and risks involved.

2 ACQUIRER'S APPROACH

A successful acquirer must be focused from the outset. The work involved in purchasing a target is often underestimated, and if the process is poorly managed it can lead to higher costs and drawn-out negotiations. Try to get lawyers involved from an early stage as this should minimise

costs going forwards.

Establish a team and agree on a budget. Negotiate heads of agreement with the sellers, which will save time and money later on, but be aware that these are not binding. Secure exclusivity for as long as possible and try to get an indemnity for your costs if the transaction does not go ahead. However, do not spend too much time negotiating the "heads" as there is a tendency to try to negotiate all the terms of the deal at that stage, which is not possible.

Consider who you may need to keep the target business going. Try to agree terms with any owner-managers as soon as possible as this is often left to the last minute and can cause a great deal of unease and damage to the transaction process.

3 PROJECT MANAGEMENT

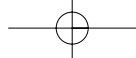
A dedicated person or team managing the transaction within

your company is invaluable – someone who is on top of the latest version of the agreement and the current status of the due diligence process, who can push things along and has a contact at the target to discuss any sticking points.

Prepare for the purchase process, which can take on a life of its own. The process usually takes between three and six months, but given the current climate be aware that it may take longer. Bear in mind that the acquirer and the seller will need to keep running their businesses, so this is where your dedicated project manager and team selection come into their own.

4 CONSIDERATION STRUCTURE & FUNDING

Purchasers have a variety of options when it comes to funding. In the current climate, it is popular to pay the minimum amount of cash upfront, combining this with shares, earn-out and deferred consideration,



potentially linked to ongoing performance. Consider how you will “sell” such a structure to the sellers; are there tax advantages, for instance? Do you want a no-cash or no-debt deal? Will you need debt or equity investment?

If funders are involved they will want their say and will expect the acquirer to pay their costs. Funders may look on a deal with deferred consideration more favourably than an all-out cash deal from day one.

5 CONDUCT DUE DILIGENCE

A targeted, specific and controlled due diligence exercise enables an acquirer to quantify the liabilities of a target going forward.

An acquirer will need to complete legal, commercial and financial due diligence. Where specific issues have been identified, these may result in indemnities, a retention, price reduction, a change in the deal structure or the deal no longer being viable.

6 INDEMNITIES/WARRANTIES & FINANCIAL HOUSEKEEPING

A full warranty schedule with specific warranties relating to sector-specific areas should be incorporated in the sale agreement, together with any specific indemnities required as a result of the due diligence process.

Consider how long warranties should be enforceable for and also what excess on warranty claims should be agreed – the lower, the better. Try not to accept any limits on liability relating to any indemnities (including tax) and any breaches of fundamental, title warranties.

7 THE DISCLOSURE PROCESS

Whereas an acquirer will use the due diligence process as a way to quantify its liability, the seller will use the disclosure process to qualify their liability. The sellers will attempt to disclose as much as possible against the warranties, and it is necessary to ensure that such disclosure is fair.

The lawyers will manage this process, but an acquirer should be on the lookout as the lawyers can only deal with information they receive during the disclosure process, whereas documentation and information may be sent between the sellers and acquirer directly.

It is vital that the project manager and acquisition team work closely together. Sellers may try to hold on to certain disclosures until the last minute and these may impact on the transaction. Set a final date for disclosures, if this is possible, after which no further disclosures should be accepted.

8 SPLIT EXCHANGE AND COMPLETION?

In some circumstances, exchange and completion may not be able to happen simultaneously as, for example, certain regulatory approvals may be required. Consider carefully any specific conditions for completion and what needs to be done in order for these to be achieved. Ensure that an acquirer has full protection in the period between exchange and completion; restrictions should be placed on the seller as to what can and cannot be done in that period. Warranties should be repeated on every day between exchange and completion and an acquirer should retain the ability to pull out of the agreement prior to completion.

9 WHEN THE DUST HAS SETTLED

Ensure that any post-completion tidy-ups have been dealt with.

It is important to liaise with the lawyers in respect of this process, to continue to keep minds, which may have strayed, focused – as there is a tendency to mistakenly consider the deal is done. Note and diarise important follow-up dates such as determination of completions accounts, payment of further consideration, warranty/indemnity periods.

10 BE READY FOR THE NEXT TIME

If thinking of a series of acquisitions or another acquisition in the future, review the whole purchase process carefully. What would you change? Common issues considered include: the amount of time involved; the number of problems that arose that could be anticipated; problems that could have been discovered earlier if the right acquisition team structure had been in place; levels of costs spiralling out of control; and a lack of knowledge of the target industry or company. ■

Danos Swain specialises in M&A, particularly in the aviation, care home, corporate real estate, insurance, off-shore unit trust and retail sectors. For more information, he can be contacted at danos.swain@thomaseggar.com

DANOS SWAIN'S CV

EDUCATION:

Swain graduated from University College of Wales, Aberystwyth, with a degree in French, German and Business Studies in 1998.

He went on to complete the CPE at Sussex University and the LPC at the College of Law, Guildford.

CAREER:

Swain qualified as a solicitor in 2002 after completing his training

with ASB Law, becoming an associate in 2005. He joined Thomas Eggar LLP in 2006.

BIGGEST ACHIEVEMENT:

In 2007, he project-managed a number of multi-jurisdictional acquisitions of property unit trusts and offshore special purpose vehicles for a property fund client, within a tight timetable, with an aggregate transaction value of more than £160 million.

