Global Private M&A Guide - Limited External Content - United Kingdom

Common deal structures

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# What are the key private M&A deal structures?

The acquisition of a target business in the UK can be effected by the purchase either of the shares of the company owning that business or of some or all of the assets comprising that business. The more commonly encountered route is the share purchase.

A share purchase involves the seller and the buyer (and any other parties, such as guarantors) entering into a share purchase agreement to record the agreement of the parties as to their respective rights, obligations and liabilities in connection with the sale of the shares in the target. On completion of the share purchase agreement, title to the shares is effected by the execution and delivery to the buyer of a stock transfer form (STF). Stamp duty at the rate of 0.5% of the consideration is payable on the STF (unless the consideration is GBP 1,000 or less). Once the STF has been submitted in PDF form by email to Her Majesty's Revenue and Customs (HMRC) and HMRC's confirmation of receipt and payment of duty has been received, the board of directors of the target company will approve the transfer and the statutory registers of the target (register of members, register of persons with significant control, etc.) will be updated to reflect the transfer of ownership of the target. It is only when the register of members has been updated that legal title to the shares transfers; the seller remains the legal owner of the shares until that time and the buyer is only the beneficial owner. During the period between completion of the share purchase agreement and registration of the buyer's name in the target's register of members, the buyer invariably obtains protection in respect of its position by obtaining from the seller on completion of the share purchase agreement a power of attorney authorizing the buyer to exercise the rights attaching to the shares while they remain in the name of the seller.

A business purchase also involves the seller and the buyer (and any other parties, such as guarantors) entering into an asset (or business) purchase agreement to record the agreement of the parties as to their respective rights, obligations and liabilities in connection with the sale of the target business. That agreement must provide for the transfer of each type of asset in accordance with the formalities for a transfer of an asset of that type. Subject to any requirements for the transfer and/or registration of a transfer of ownership of a particular asset (such as intellectual property), legal title to the assets transfers on completion of the asset purchase agreement.

Auction processes are frequently encountered in the UK for both share and asset sales.

Bid process letters are frequently encountered in the UK and typically are not legally binding.

A scheme of arrangement can also be proposed by the company in accordance with Part 26 Companies Act 2006. It is a court-sanctioned statutory process enabling a company to come to a binding arrangement or compromise with all of its members (or any class or classes of the members) or creditors (or any class or classes of the creditors) that may be used to effect the transfer of a target's shares or business. It is typically used only for publicly listed companies.

There is no simple UK statutory procedure that permits two UK companies to merge whereby one of them succeeds to all the assets and liabilities of the other and the latter is then automatically dissolved by operation of law.

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

A private company limited by shares.

# What are the different types of limited liability companies?

A private company can be limited either by shares or by guarantee. In the case of a private company limited by shares, the shareholders' liability is limited to the amount unpaid (if any) on shares that they own in the capital of the company, whereas in a private company limited by guarantee, the members will agree to contribute a certain amount to the company's assets on a winding-up and their liability will be limited to that amount. Because of the restricted recourse to shareholders in the case of a limited company, there is greater regulation of limited companies compared with unlimited companies (for example, rules relating to maintenance of capital).

# Is there a restriction on shareholder numbers?

A private company limited by shares must always have at least one shareholder, but there is no upper limit on the number of shareholders.

# What are the key features of a share sale and purchase?

All that is generally required to transfer legal title to the shares in a UK private company is for a stock transfer form to be executed by the seller, stamped with duty paid at the rate of 0.5% of the consideration and then registered in the register of members of the target. The seller's share certificate in relation to the shares transferred will be delivered to the buyer at completion(or, if the share certificate has been lost or destroyed, an appropriate indemnity).

# What are the key features of an asset sale and purchase?

When a business is being transferred by way of an asset purchase, each individual asset must be transferred in accordance with the formalities for a transfer of an asset of that nature. In respect of some assets, this will simply be a case of physically delivering the asset to the buyer but, in other cases, the formalities are more prescriptive, such as in the case of real property or intellectual property (where a separate instrument of transfer must be delivered and later registered).

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