



## **Buying a UK company: a brief guide for American lawyers and investors**

The UK and USA have a history of excellent business relations. With the UK being one of the most open markets in the world, it continually appeals to US investors who wish to purchase a business in a different jurisdiction. The aftermath of Brexit has led to an increased British interest in working with US counterparts, and many UK companies are currently undervalued, making them prime opportunities for well advised American investors.

There are many other factors that have always played their part in the appeal in UK investment – it's one of the largest economies in the world, no language barrier, a more simplistic acquisition procedure than that you'd encounter with EU, Latin America or Asian targets, strong trading power, competitive tax rates, and generally how easy it is to do business in the UK.

However accessible and similar the UK acquisition process may be to US procedures, there are some idiosyncrasies of the English system that US professionals might not be familiar with. We've created the following guide which should highlight and explain some of the distinctions between UK and US ways of investment.



# 1

## **Heads of Terms**

This is what the British call a letter of intent or a Memorandum of Understanding. Note that an ‘agreement to agree’ under English law is generally not enforceable, unlike in the US.

# 2

## **Due diligence**

Same concept as in the US, but with the benefit of there being just one depository for the whole of England for court records, land title and company registrations. This makes it considerably easier than in the US with its 50 states. As in the US, managing this process properly and producing an easy-to-interpret report for the investment committee is key.

# 3

## **Share purchase, not merger**

In the UK, stock acquisitions are nearly always carried out as a purchase of shares, sold by the shareholders of the target to the US buyer. PE deals are usually structured via multiple newco groups and acquisitions made via one of these entities. Tax structuring is critical which links in closely with how the deal is funded. Discussions on this and early advice is very important to achieve the best outcome and to avoid compounded issues further down the line.

# 4

## **Regional variations**

Scotland, Northern Ireland, and Wales can have significant variations to those of England. While England is one legal unit, it is still important to have local knowledge. A law firm with offices in different parts of the UK can help a US investor with knowledge at the county, city or even town level. This can be important in a country where habits and customs can go back 900 years or more. (For the purposes of this guide we’ll assume the transactions are in England).

# 5

## **Deeds**

These are an old form of contract and do not require consideration. They require certain methods of execution and there is no reason why you, representing a US buyer, should not request that the document be converted to a normal contract. Some UK law firms will automatically print form documents such as ‘deed of assignment’ out of habit (we personally wouldn’t do that without good reason). You might want to insist that this is converted to a contract, but you’ll need to ensure that the document does provide for consideration.

# 6

## Jargon

Some handy like for like phrases



- Articles of association
- Clauses
- Company
- Completion
- Disclosure letter
- Ordinary shares
- Shareholder
- Trading business



- Bylaws/Constitution
- Sections
- Corporation
- Closing
- Disclosure schedule
- Common stock
- Stockholder
- Operating business



In smaller deals, some lawyers talk about ‘exchange’ when they mean signing – harking back to the days when people would physically hand each other signed copies of documents as they sat together in a room. This becomes relevant when you don’t sign and complete on the same day.

# 7

## The Share Purchase Agreement

### a. Representations and warranties

In the US, representations and warranties are typically qualified by the disclosure schedules. In addition, representations and warranties are typically given both as of signing and as of closing. English lawyers, however, often avoid the term ‘representation’ because it would leave the seller vulnerable to claims of misrepresentation (in tort). Warranties in English law transactions are often qualified by both the disclosure letter and by reference to the data room – and sometimes even by general disclosure, such as information that is publicly available. Typically, in US deals, warranties are given on an indemnity basis, whilst in the UK this is rarely the case. The position will be strongly resisted by UK sellers, with the right discussions via the buy-side team a similar position as in the US can typically be achieved for some, if not all, of the warranties.

### b. Completion accounts and ‘locked box’

US acquisition agreements governed by Delaware law use purchase price adjustment mechanisms after closing the deal based on updated financial statements of the target company. In England, the buyer’s lawyers will do the same thing by reference to ‘completion accounts’, but a seller’s lawyer will want a ‘locked box’ mechanism. This is where the purchase price is established based on the last set of financial statements. English lawyers then tack on an indemnity to protect the buyer from assets being transferred from the target company to the sellers, and this indemnity covers the period from the date of the financial statements to completion/closing, avoiding the need to adjust the purchase price and being a preferable position for the seller.

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In other respects, you will find that the pace and style of UK M&A lawyers is similar to the US. Our lawyers and many other British solicitors are familiar with global practice and will adapt their schedules to fit with US clients. We understand how important that can be when there's a five to eight-hour time lag and you need to meet deadlines. Video conferencing and signing pdf documents digitally is very common and speeds up the process.

Every deal is different, and with UK companies there is quite often an overseas element either in terms of subsidiaries or shareholders. We have vast experience in private equity, successful overseas investment, and working with US lawyers and businesses. We work closely with top UK PE houses and have a UK wide reach – ensuring wherever you choose to invest, we have the right support available to you.

If you are part of an upcoming UK acquisition or exploring the possibilities of investing in a UK business, get in touch to discuss the procedures involved, and how we can work with you to make it as straight forward, timely and cost effective as possible.



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