



FORENSIC AND VALUATION SERVICES

PRIVATE EQUITY - PRE AND POST TRANSACTION SUPPORT

August 2021

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OUR SERVICES

How can we help you?

Whilst many PE transactions will progress smoothly, it is important to prepare for situations where a dispute or other unforeseen problem may arise. Our Forensic Accounting & Valuation Services department offers a range of specialist services, both to reduce risk exposure pre-deal, and to assist with issues that may arise post-deal.

PRE-TRANSACTION SERVICES

Our experience in resolving post-completion issues means we are well placed to identify specific areas of risk pre-transaction.

Pre-transaction SPA Advisory

Our team can assist with providing pre-transaction SPA advisory services such as:

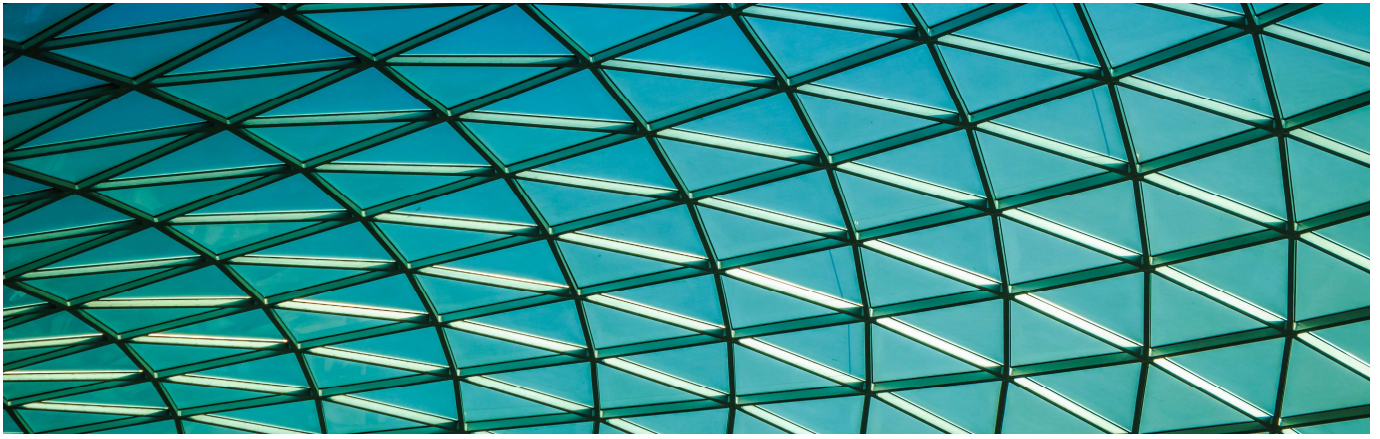
- ▶ Reviewing pre-completion SPA accounting issues (e.g. accounting definitions, warranties and indemnities, limitations on liability)
- ▶ Assisting with the compilation and review of completion accounts / locked box mechanisms and earn-out / deferred consideration schedules
- ▶ Liaising with legal advisers and due diligence / M&A professionals to ensure the SPA adequately reflects your intentions
- ▶ Providing advice regarding warranty & indemnity insurance, including liaising with brokers and reviewing policy terms.

Integrity Due Diligence

We can investigate the target company and its principals to identify potential risks including reputational risks to the purchaser post-acquisition; legal and regulatory risks; or post-acquisition operational risks to the target. Potential focus areas include:

- ▶ The true beneficial owners of the target
- ▶ Directors and de-facto decision makers of the target company
- ▶ Connections to political or organised crime groups of the target and its principals
- ▶ Major clients, customers or strategic partners of the target company
- ▶ International sanctions and watch lists
- ▶ Actual, potential or historical litigation.





POST-TRANSACTION DISPUTES

Regardless of the steps taken to identify, mitigate and eliminate risks pre-transaction, not all transactions will be successful for all participants, and disputes can arise. If this happens we are here to help.

Post-deal advisory services

We can offer a range of services in respect of parties' post-completion obligations, and to assist you navigate the often complex post-deal landscape.

Our services include:

- ▶ Completion accounts review
- ▶ Leakage review
- ▶ Earn-out / deferred consideration review
- ▶ Purchase price mechanism adjustment review
- ▶ Purchase price allocation review.

Expert determinations

We have experience of determining high-profile and complex disputes across a range of sectors and countries. Our experts are recognised by the ICAEW President's Nomination Scheme.

Subject matters include:

- ▶ Completion accounts
- ▶ Earn out accounts
- ▶ Shareholder disputes
- ▶ Share valuation disputes.

Completion accounts and earn-out disputes

Completion accounts and earn-out disputes rarely proceed through civil litigation, but are more commonly dealt with via expert determination. We have experience both of advising clients through the process and acting as independent expert.

When acting on your behalf we will ensure you are in the best position to submit a successful report to the independent expert. We can support you in the following ways:

- ▶ Advising on the independent expert's terms of reference
- ▶ Assessing the strengths and weaknesses of your position in accordance with the SPA
- ▶ Assistance in the preparation of submissions
- ▶ Assisting with questions from and oral evidence to the independent expert
- ▶ Liaising and negotiating with counterparties' advisors.

Breach of warranty claims

We also have significant experience with claims arising from breach of warranties. We can assist with:

- ▶ Advising on liability issues and with the assessment of quantum
- ▶ Helping you understand the issues that have given rise to the dispute
- ▶ Providing expert witness services in court, arbitration or alternative dispute resolution proceedings
- ▶ Advising on warranty & indemnity insurance claims, including policy issues as well as quantum and liability.

POST-TRANSACTION INVESTIGATIONS

Even the most rigorous due diligence may not identify all risks associated with a transaction. Various factors can lead to adverse post-deal performance, and risks of fraud and financial wrong-doing can often not be fully understood until the target has been acquired.

Should the need arise, our team can perform a forensic investigation into a range of potential issues including:

- ▶ Accounting 'black holes'
- ▶ Fraud and financial crime
- ▶ Regulatory breaches
- ▶ Adverse post-deal financial performance.

OUR EXPERIENCE

How we have recently helped PE clients

RECENT EXPERIENCE WITH PRIVATE EQUITY CLIENTS INCLUDES

<p>PRE-TRANSACTION ADVISORY</p>	<p>Our client was acquiring a US business via a complex deal which included earn-out and loan note consideration mechanisms.</p> <p>Working alongside the client, US and UK legal advisers, due diligence and M&A teams, we:</p> <ul style="list-style-type: none"> ▶ Reviewed and strengthened the seller warranties and indemnities; and ▶ Reviewed the accounting policies and hierarchy to be used in the completion and earn-out accounts. <p>Our work ensured that the buyer was not exposed to undue risk in respect of potential payments regarding working capital and future earn-out payments.</p>
<p>PRE-TRANSACTION INDUSTRY DUE DILIGENCE</p>	<p>Our client was acquiring a software business with affiliates in Russia and Kazakhstan. We conducted an investigation which identified:</p> <ul style="list-style-type: none"> ▶ Although nominally independent, the Russian company controlled the Kazakh company both strategically and operationally; ▶ The western-based ‘parent’ did not actually own the Russian entity; and ▶ The existence of detailed and credible allegations of bribery in relation to the Russian entity. <p>Our client proceeded with the acquisition. However, on the basis of our findings the Russian and Kazakh entities were attributed a zero value in the deal.</p>
<p>POST-TRANSACTION DISPUTES (ACTING ON BEHALF OF CLIENT)</p>	<p>Our client was party to an expert determination following the sale of its telecommunications business. The dispute concerned the revenue recognition policy to be applied to certain long-term contracts in the deferred consideration accounts. We prepared an expert report that was exhibited to our client’s submission to the expert. We also advised our client during the preparation of their submissions and the wider determination process.</p> <p>The expert agreed with our client’s position as to the deferred consideration payable.</p>
<p>POST-TRANSACTION DISPUTES (ACTING AS INDEPENDENT EXPERT)</p>	<p>We acted as independent accountants in an expert determination following an acquisition by a private equity fund. The dispute concerned a provision against inventory value that had been applied by the purchaser in the draft completion accounts. The individual line items making up the adjustment were disputed between the parties and so the first phase of work involved a reconciliation between the draft completion accounts, the dispute notice, and subsequent correspondence. We were then able to consider the application of the hierarchy presented in the SPA to the inventory provision in draft completion accounts and issue our determination.</p>
<p>INVESTIGATIONS</p>	<p>Our client had acquired the majority shareholding in a media company. The target’s actual post-deal performance was significantly worse than forecast. It also became the subject of regulatory investigations. It entered insolvency proceedings two years after the SPA was signed.</p> <p>Our team led a hard-copy and e-discovery exercise in five offices in Europe and Asia. We performed detailed analysis work on actual and forecast post-deal performance and investigated high-risk transaction classes where our client had specific fraud risk concerns.</p> <p>Working alongside the client’s solicitors our reported findings formed the basis of a Letter Before Action that was served against the sellers in the UK Court.</p>

OUR PEOPLE

Key contacts

PRE-TRANSACTION SERVICES



LAURENCE MILLS

+44(0)121 352 6241

laurence.mills@bdo.co.uk



LAWRENCE MCGINLEY

+44(0)161 817 7579

lawrence.mcginley@bdo.co.uk



ALEXANDER DAVIES

+44(0)20 7893 3988

alexander.davies@bdo.co.uk

POST-TRANSACTION DISPUTES



NICK ANDREWS

+44(0)20 7893 3780

nick.andrews@bdo.co.uk



GERVASE MACGREGOR

+44(0)20 7893 2699

gervase.macgregor@bdo.co.uk



SAT PLAHA

+44(0)121 352 6210

sat.plaha@bdo.co.uk



PHILIP DE VOIL

+44(0)121 352 6200

philip.devoil@bdo.co.uk

INVESTIGATIONS



KALEY CROSTHWAITE

+44(0)20 7893 3548

kaley.crossthwaite@bdo.co.uk



RICHARD SHAVE

+44(0)20 7893 3546

richard.shave@bdo.co.uk



NAT BUTCHER

+44(0)20 7893 3480

nat.butcher@bdo.co.uk



FOR MORE INFORMATION:

NICK ANDREWS

+44 (0)20 7893 3780
nick.andrews@bdo.co.uk

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