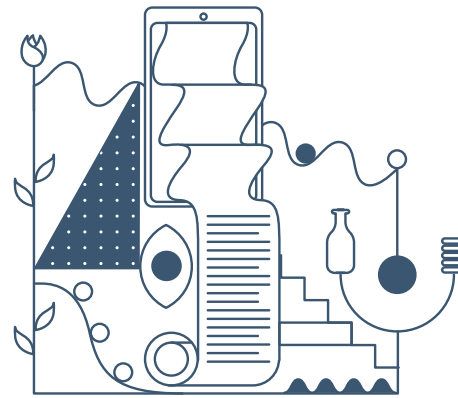


M&A IN SURREAL TIMES: 8 THINGS TO CONSIDER IN THE MONTHS AHEAD

Transacting in the current environment is not for the faint hearted but there are clearly opportunities out there. If you are considering M&A in this surreal, topsy-turvy landscape, here are 8 key issues to bear in mind.

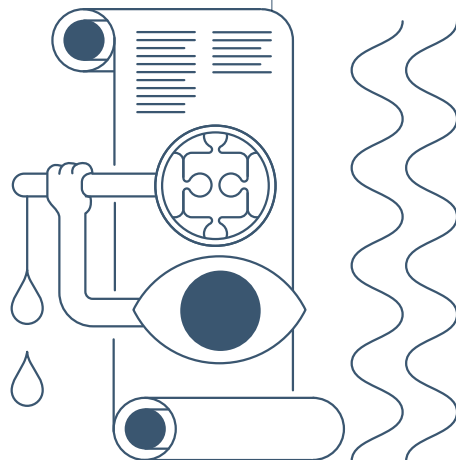


1 WHAT'S IT WORTH?

Be wary of past performance when valuing assets – it's all about understanding a target's 'new normal'. Up-to-the minute financial information combined with sector insight is essential. Expect a greater emphasis on management discussions to reveal short- and long-term expectations.

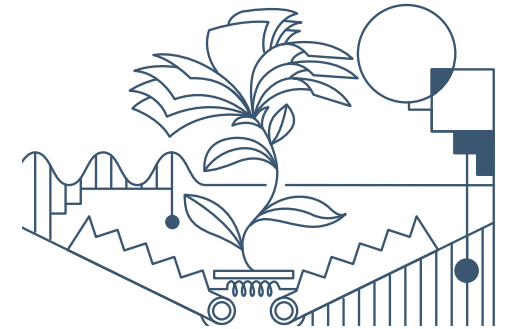
3 THE DEVIL IS IN THE DILIGENCE

Purchasers may feel the need to 'double down' on diligence to fully understand risk. Sellers should expect this and be ready to allay purchaser fears on pandemic-related issues (e.g. fraudulent furlough arrangements). However, purchasers that take an agile, risk-based approach to pursue opportunities will be most successful.



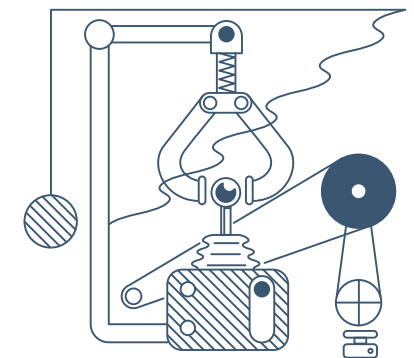
2 PRICING PERILS

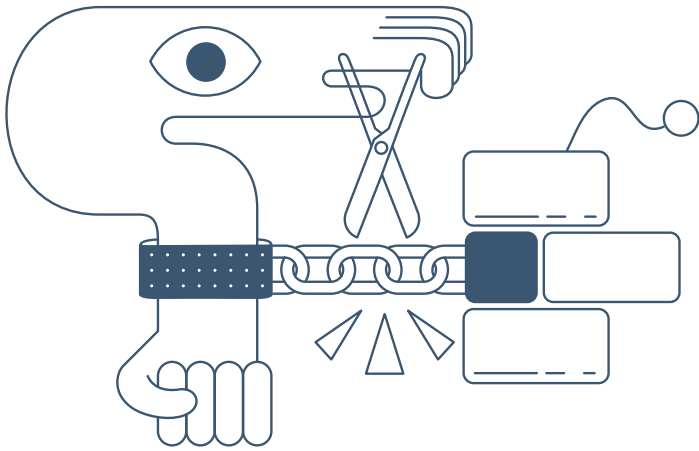
As purchasers want greater control over what they pay, when they pay and performance metrics, we'll see increasing use of completion accounts, deferred consideration structures and earn outs. But purchasers beware: earn outs can increase the likelihood of disputes and result in unwanted seller controls.



4 CONDITIONALITY: MERGER CONTROL

Competition regulators look set to continue an interventionist approach to M&A. The 'failing firm' exception is likely to be interpreted narrowly. Expect to see increased focus on Foreign Direct Investment controls for foreign purchasers, difficulty in market-testing mergers leading to extended clearance timetables.





5

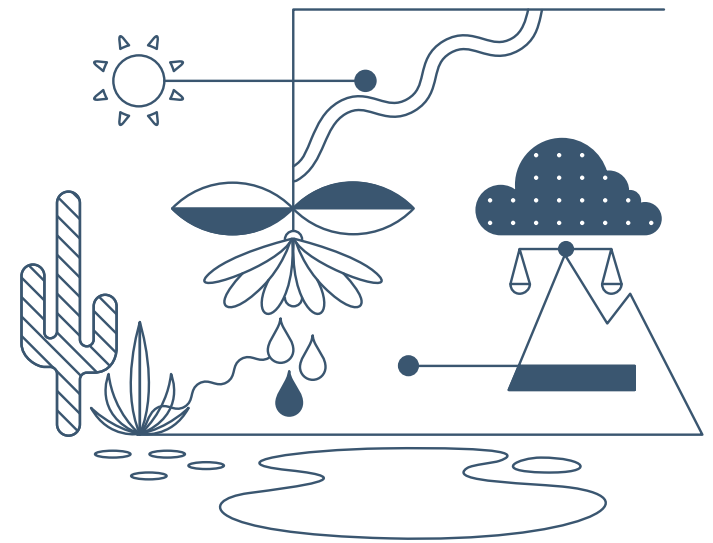
MAC: A FALSE DAWN?

Inevitably, purchasers may look for greater 'walk away' rights in conditional SPAs, with fraught negotiations likely around MAC rights. If a MAC concept is accepted, we would still expect it to be narrowly defined without reference to wider market triggers. Relative bargaining positions aside, we don't expect "market" MACs to become the norm in the UK any time soon.

7

INSURANCE AGAINST UNCERTAINTY?

With purchasers looking for extended warranty cover to mitigate risk, whilst limiting vendor protections, negotiation friction is inevitable. Insurers are responding by dropping premiums, pre-defining templated W&I coverage and introducing new products (like synthetic tax covenants), but remember - insurers will only cover risks provided there is reasonable purchaser diligence. W&I is not a panacea solution.



8

ESG: GREEN IS GO

We still expect ESG considerations to be at the forefront of minds when considering M&A. Being able to measure, track and report performance against ESG metrics will be vital for purchasers who will build this into their transaction delivery models.



6

REPUTATION

Right now, any large-scale M&A will be newsworthy. Anticipating and controlling investor reaction to transactional activity is critical. We may even see sellers proposing anti-embarrassment clauses in their SPAs to protect against the reputational fall out of under-cooked valuations.

AG'S TIER-1 RANKED CORPORATE LAWYERS COMPLETED OVER 200 ACQUISITIONS AND OTHER STRATEGIC DEALS LAST YEAR - ONE EVERY OTHER DAY OF THE YEAR - WITH AN AGGREGATE VALUE OF £8.2 BILLION

If you would like a more comprehensive view of what we're seeing in the current environment, and what steps you should take to maximise your chances of success, please get in touch.

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