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1. General Statement

As a general comment, the private equity sector in the UK is currently experiencing a high level of activity with increasing large EBITDA multiple valuations.

The agreed terms of a deal are always dependent on the specifics of any given transaction but, that said, as a firm (given then number of deals we see each year) we have been able to identify a number of trends as to what constitutes "market practice".

Using a sample pool of recent transactions we have worked which wider that the four summaries we have included herein, we have noticed that in UK private equity transactions:

- around 75% use a locked-box price adjustment mechanism (and that increases to around 90% in auction processes);
- around 25% of auction processes were subject to a pre-emptive bid;
- tax covenants are becoming less common (with only around 25% of auction process transactions containing one);
- alternative debt financing has increased (including all-bullet structures and unitranche funding);
- musketeer clauses (requiring buyers to bring warranty claims against all, not just some of the warrantors) are increasing common, with around 25% of deals now containing one;
- an 18 month time limit of bringing a general warranty was the most common;
- the majority of auction process transactions had a time limit of less than 4 years on tax warranty claims; and
- financial limits on general warranty claims still use the 1% of EV minimum (aggregate threshold to bring a claim) and 0.1% of EV *de minimus* (for individual claims to be actionable at all) as bench marks.

While the results summarised below use a smaller sample pool (and are therefore inevitably slightly different), the results were not particularly surprising to us.

2. Summary of Transaction Details

We have provided four completed questionnaires for deals that our firm has worked on in the past 12 months (we have not disclosed the precise date signed / completed due to confidentiality reasons) (the "**Deals**").

The Deals range from c. €39 million to €190 million with a median deal value of €42 million. Half of the Deals involved a target with over 200 employees (with a corresponding half involving a target with less than 200).

Half of the Deals involved a 100% acquisition of the shares in issue, but none of them involved an auction process.

3. Letters of Intent

All of the Deals included a letter of intent / heads of terms equivalent, half of which contained exclusivity clauses of more than 1 month, 25% contained an exclusivity clause of less than 1 month and 25% did not contain an exclusivity clause.

In all cases, the letters of intent were only legally binding in certain aspects (namely exclusivity – if there was such – confidentiality and governing law etc.).

4. Due Diligence

It is more common in the deals we see as a firm (other than auction processes) that the due diligence is done by the buyer rather than the vendor. Having said that, in 25% of the Deals there was vendor due diligence carried out (and the resulting report was made available to the buyer).

All of the Deals used a virtual data room, 75% of which were managed by law firms and the remaining 25% were managed by the financial advisers to the sellers. 75% of the Deals had a formalised Q&A procedure, and only 25% did not allow viewers to print / save documents from the data room (although such restrictions are relatively common in UK deals).

5. Purchase Agreement

Transaction

All of the Deals had simultaneous exchange and completion, used purely cash (no stock) as consideration and were in the English language. They also all used price adjustment mechanisms, of which half were locked box and half used completion accounts. As mentioned in paragraph 1 above, using a wider sample pool we find that it was more like 75% of deals in the UK done by means of locked box mechanisms.

Purchase price

50% of the Deals contained earn out payments and 50% involved full payment at completion. 25% of the deals also used an escrow for a percentage of the consideration.

Half of the Deals were financed out of equity (existing funds available to them) whereas the other half used a combination of equity and bank debt.

MAC clauses

None of the deals had a MAC clause (which are still rare in the UK market).

Warranties and indemnities

All of the Deals contained (broadly standard extensive list) business and tax warranties as well as a tax covenant (although as mentioned in paragraph 1 above, these are increasingly rare in auction process transactions) from the management sellers. As they were all simultaneous exchange and completion deals, there was no repetition of warranties at completion.

Half of the Deals contained specific indemnities in relation to risks identified out of the diligence process, which is a common way in the UK of a buyer dealing with such concerns without the need for a price chip.

Limitations of liability

The time limitations for bring a business warranty claim in the Deals varied from 14 months to 24 moths but half were for 18 months (which, as per paragraph 1 is what we find to be the most common period).

None of the Deals contained time limitation for the fundamental warranties (in relation to title to shares, capacity etc.) but all of them applied a longer time limit (compared to business warranties) to tax claims.

Warranty claims are normally financially limited to a percentage of consideration received by the warrantors (rather than all sellers, and in UK private equity deals it is normally only the managers that give the warranties) and therefore the percentage of purchase price will vary considerably depending on whether it is a primary or secondary sale. As per paragraph 1 (using a wider range of deal samples and therefore more generally) financial limits on general warranty claims still use the 1% of EV minimum (aggregate threshold to bring a claim) and 0.1% of EV *de minimus* (for individual claims to be actionable at all) as bench marks.

Of the Deals, the minimum claims and liability caps were as follows:

Deal	Minimum (individual)		Minimum (aggregate)		Liability cap	
	Cash	% of purchase price	Cash	% of purchase price	Cash	% of purchase price
Deal 1	€7,000	0.015%	€210,000	0.47%	€1,875,000	4.26%
Deal 2	€233,000	0.09%	€2,336,000	0.9%	€6,000,000	3.15%
Deal 3	€13,000	0.03%	€133,500	0.3%	€40,000,000	100%
Deal 4	€33,000	0.1%	€334,000	1.0%	€650,000	1.94%

Disclosures

All of the Deals had disclosure letters against the business and tax warranties (as is consistent with UK practice). 75% of those disclosure letters contained full data room

disclosure and all of them included the Q&A log and public information as generally disclosed. Half of the Deals allowed due diligence reports to be generally disclosed.

While none of the Deals included a split exchange and completion, repetition of the warranties at completion (in the event of such split) is normally heavily negotiated and deal specific in the UK market.

6. Conditions Precedent

None of the Deals involved a split exchange and completion and therefore did not contain any conditions as to completion (although such deal structures are common). Accordingly none of the Deals required merger filings, prior third party consent, certain funds clauses, MAC clauses (which are still very rare in UK deals), bring-down wording for warranties or retention of key employees as a condition to completion.

In UK deals it is normal for the buyer to require a legal (authority and capacity) opinion in relation to non-UK sellers (to ensure that they are bound by the warranties and other obligations in the deal documentation). It is less common to require a legal opinion in relation to a non-UK buyer unless there is deferred consideration or a split exchange/completion, although you do see them occasionally. 25% of the Deals contained a legal opinion.

7. Non-Competition/Non-Solicitation/Restrictive Covenants

In UK private equity deals, management sellers (whether being retained or not post-completion) will give some form of non-compete and non-solicitation (generally of employees, customers and suppliers). Institutional investors will not, generally, give any such undertakings.

Accordingly all of the Deals included non-compete and non-solicitation undertakings (none of which had a liquidated damages clauses, which are sometimes avoided in the UK for fear that they will be deemed a penalty clause and therefore unenforceable under English law). None of the Deals included non-disparagement or non-embarrassment covenants which are less common in the UK market. 75% of the Deals contained blue pencil clauses.

8. Governing law & Jurisdiction

Almost all UK based private equity deals (that we are as a firm involved with) are documented in the English language and using English law and jurisdiction. Accordingly, all of the Deals were in English with jurisdiction and choice of law clauses opting for England and English law respectively. While mediation and (especially) arbitration clauses are occasionally seen, they are still in the minority in UK private equity deals.

Litigation on representations and warranties are extremely rare in the UK market and, as we would expect, none of the Deals have been litigated on (and we are not aware of any intention of such in relation thereto).

9. General Information

As a firm the vast majority of our transactions involve some form of international element, but of the sample used in the current process only 25% of the deals included a true cross-border element (which did not come from an AIJA referral).

For confidentiality reasons (and the ability to identify the Deals from public announcements) we have not included the names of the other law firms involved in the transactions.