

Euro-Japan Group



Getting Started With M&A in the UK

Mergers and acquisitions can be stressful. This is especially the case when attempting a cross-border transaction where you fear that the business/transaction common sense that you have obtained over the years may not be applicable. Below are a few basic highlights of M&A transactions that will hopefully increase your comfort level with deals in the UK.

AUCTION PROCESS

In many cases a buyer will have the opportunity to negotiate an acquisition of a UK company directly with its shareholders and/or the target, but in certain cases where a financial advisor is retained by the seller, an auction process will be commenced to find the best buyer for the target. The steps of a typical auction process are as follows:

TEASER

A teaser is a document that does not identify the name of the target but provides information concerning the target's performance and industry/products.

NON-DISCLOSURE AGREEMENT

If a buyer is interested in the company described in the teaser, the buyer will be asked to enter into a non-disclosure agreement in order to receive further detailed information concerning the target.

INFORMATION MEMORANDUM AND PROCESS LETTER

Upon submitting a non-disclosure agreement, the buyer will be provided with an information memorandum and process letter. The information memorandum will disclose the target's name and further detailed information concerning its management, performance, industry and products. The process letter will indicate the process and general timeframe of the auction.

INDICATIVE OFFER

The usual first step described in a process letter is a request to submit an indicative offer. This indicative offer is presumed to be non-binding, but will establish the basis upon which future discussions will take place. Among other things, a seller usually asks the buyer to indicate in the offer the potential purchase price, the logic behind determining such price, the source of funding, the reason for interest in the target and details of the approval process the buyer will require to complete the deal. The seller will consider all the indicative offers it receives from potential buyers and choose a few that may proceed to conduct due diligence of the target.

DUE DILIGENCE

If the buyer is chosen by the seller to conduct due diligence, it will be given a certain amount of time (usually two to four weeks) to do so. This typically includes management meetings and review of a virtual data room where documents about the target are stored.

The UK provides an amicable business environment for Japanese companies

COMMENTS TO DEFINITIVE AGREEMENTS

In conjunction with, and for the most part parallel to, the due diligence process, the seller will deliver to the potential buyers draft agreements. The buyer is expected to consider the draft documents in light of its due diligence exercise.

SECOND BID

Upon completion of due diligence, the buyer will be asked to submit a second offer. Although the second bid may be conditional on a few events, the seller usually requests that the second bid be a binding offer accompanied by a mark-up of the draft agreements reflecting the terms under which the potential buyer will be willing to acquire the target.

NEGOTIATION (NOT ALWAYS POSSIBLE)

The seller will make a determination of the final potential bidders it wishes to negotiate with based upon the second bid. The time available to negotiate a deal is limited, and a private equity seller typically will not accept any warranties or indemnity provisions (and expect selling management to accept such provisions).

SIGNING/SIGN AND CLOSE

Unless there are governmental filing requirements (such as antitrust filings) or other conditions to the transaction, sellers tend to prefer signing definitive agreements and closing the deal at the same time.

PRE-DUE DILIGENCE (WHAT INFORMATION IS READILY AVAILABLE)

Even before deciding whether you have a real interest in a UK target company, there are a few basic searches that you can do to obtain information about your potential target company. (Please note that companies trading on a public exchange must file detailed information about their business, which can be obtained from the London Stock Exchange website [<http://www.londonstockexchange.com/home/homepage.htm>].)

REGISTRAR OF COMPANIES (COMPANIES HOUSE)

Companies in the UK must file their accounts with the Companies House. Such accounts include the profit-loss statements, balance sheet and directors' report (including the names of directors and share interests). You can pay a small amount to receive the most recently filed documents of a company through the Companies House website (<http://www.companieshouse.gov.uk/>).

UK PATENT OFFICE (OPERATING AS THE INTELLECTUAL PROPERTY OFFICE)

You can search for patent and trademark registrations made with the UK Intellectual Property Office through its website (<http://www.ipo.gov.uk/>).

HM LAND REGISTRY

The HM Land Registry maintains a title register that includes ownership details and, for most properties that have changed hands since April 2000, property price information. This should allow you to find out who owns a certain property, the extent of such property and, potentially, the purchase price when it was last purchased. Such information can be obtained for a small fee through the Land Registry's website (<http://www.landregistry.gov.uk/>).

POTENTIALLY ANNOYING NUTS AND BOLTS

CRIMINAL RECORDS NOT NEEDED

Unlike France and some other European countries, in the UK directors do not need to submit criminal records in order to be registered as a director of a company.

MINIMUM AGE LIMIT

Under the Companies Act 2006 a director must be at least 16 years old at the time of appointment.

DIFFERENCE IN TERMINOLOGY

Unlike transaction documents common to the United States, UK share purchase agreements do not refer to “Representations and Warranties”, but simply provide for “Warranties” against which the seller discloses certain facts. Also, UK share purchase agreements will provide for a “tax covenant”, which appears as either a schedule to the agreement or a separate document usually referred to as a “tax deed”. A tax deed sets out indemnities/warranties relating to tax liabilities.

ISSUANCE OF NEW SHARES TO THIRD PARTIES

Though not an “acquisition” issue, UK companies must offer new shares to their current shareholders. Therefore, in order to issue new shares to a third party, shareholders must waive their preemption rights and grant the board of directors the authority to issue new shares in favour of a third party. This may become relevant if the management of a target sells its shares in the target at closing, with the understanding that management will subscribe to new shares of said target at that time.

UK-JAPAN TAX TREATY AND CORPORATE INCOME TAX

Corporation Tax	The corporation tax in the UK for year 2011 is 26 percent. The UK government indicated that the corporation tax rate will be decreased by 1 percent every year until April 2014, when the corporation tax rate will be 24 percent.
Dividends	No withholding tax on dividends when the receiving shareholder has held more than 50 percent of the paying company's stock for more than six months.
Loan Interest	10 percent withholding tax on payment of interest on loans (subject to certain exemptions).
Royalties	No withholding tax imposed on payment of royalties.
Share Sale Revenue	No UK tax liability on revenue from sale of shares of a UK company by a Japanese company, but potential Japanese tax liability on revenue from sale of shares of a Japanese company by a UK company.

SUMMARY AND OUTLOOK

There has been a trend towards Japanese companies relocating their European headquarters from continental countries such as the Netherlands to the UK, as can be seen with Canon and Panasonic in recent years. This provides some guidance as to the relatively amicable business environment of the UK. For Japanese companies, the potential efficiency that can be gained through operating in a country where English is the official language may add to the benefits of acquiring a company in the UK.

CONTACT DETAILS

The Squire Sanders Euro-Japan Group is based in London and combines broad experience in Asia with a deep understanding of the global transactional environment. We provide corporate legal services in several areas, including cross-border M&A, joint ventures, private equity, capital markets and investment funds involving businesses in Asia. We represent clients doing business in Asia, as well as a growing number of Asia-based clients expanding internationally. Our Euro-Japan Group forms a key component of our Asia Pacific practice, which is served worldwide by our 36 offices in 16 countries. The group is led by Saburo Nakao, who has substantial international business experience having worked and lived in the global financial centres of New York, London and Tokyo

For further information please contact;



Saburo Nakao
New York Lawyer
Partner, London
T: +44.20.7655.1754
E: saburo.nakao@ssd.com



Manmohan Singh Panesar
Senior Associate, London
T: +44.20.7655.1690
E: manmohan.panesar@ssd.com