Mergers & Acquisitions

Clear signs of revival in M&A market

Expert opinions agree that Irish and global M&A markets are looking positive, reports **Barry McCall**

FOLLOWING a decrease in deal volume of between 7% and 10% during 2023, the Irish M&A market appears to be poised for a welcome upswing in activity.

Pent up investor demand, coupled with the continuing strong performance of the Irish economy, makes this country attractive to dealmakers.

"Notwithstanding ongoing macro-economic and geopolitical considerations, Ireland continues to benefit from a resilient M&A market, particularly relative to the UK where M&A activity has been more muted," says Ross O'Donovan, director, Financial Advisory, with Deloitte.

"Pent up demand from Irish and international private equity investors, well-capitalised international trade buyers and delayed shareholder exits post-Covid are conducive to volumes remaining strong in 2024 and beyond," he continues. "As the domestic private equity market continues to mature and with typical hold periods of three to five years, we also expect to see a number of private equity portfolio company exits this year. Furthermore, ongoing signals from the ECB in respect of targeted interest rate cuts later in the year are providing greater comfort over the access to and affordability of financing to support such activity."

As a result, international trade buyers and private equity investors continue to regard Ireland as a highly attractive location for opportunities, supported by strong management teams and businesses inherently focused on international growth, he adds.

PwC Ireland corporate finance partner Laura Gilbride also believes the Irish M&A market is poised for an upswing in activity in 2024.

"Some, but not all, sectors are already seeing an increase in deals," she says. "The market upturn will differ from previous ones, with a larger role for private credit and greater focus on value creation and growth. Pent-up demand from private equity, a stabilising interest rate environment and growing pressure for strategic transformation among companies will create more opportunities for deal activity."

Mazars deals partner John Bowe agrees: "While deal volumes dipped in 2023 compared to 2022, mainly due to economic uncertainty and escalating interest rates, this downturn has created pent-up demand for transactions. As uncertainties subside, we expect deal activity to rebound, with heightened activity expected throughout 2024. A key driver of M&A activity is the availability of investment capital earmarked for Irish companies. Irish and international private equity funds all have capacity to invest and are looking to back strong management teams on their growth journey."

Gilbride also points to a number of significant major deals, both internationally and in Ireland. "It is worth noting, that although M&A activity is continuing to focus on mid-market deals, 2024 has already seen a number of mega deals announced including Hewlett Packard Enterprise's proposed US$14bn acquisition of Juniper Networks, in Ireland we saw Starwood Capital paying €791 million for 50% of Echelon Data Centres, and Phoenix Tower's €971 million purchase of Cellnex Telecom's Irish mobile phone towers. These transactions highlight a greater willingness among dealmakers to do larger, more complex deals."

While the M&A market is more buoyant, deal processes still require careful preparation to be successful, industry experts advise.

Her PwC colleague, corporate finance director Ray Egan, says we shouldn't expect a dramatic increase in activity, however. "A measured upswing in 2024 is expected versus 2023, during which approximately 330 deals closed in Ireland. Whilst dealmakers are understandably eager for the downward trend to be over, the upturn is expected to be more measured than the surge of dealmaking activity which occurred during late 2020 and in the record-breaking year of 2021."

According to Ross O'Donovan, businesses with strong fundamentals including a repeating revenue profile, attractive customer base, strong margins and downside risk mitigation continue to attract significant interest. "TMT, financial services, business services and industrials - notably precision engineering, are sectors of particular interest for both private equity investors and trade buyers on the basis of being naturally aligned to such characteristics," he adds.

"Other macro trends are having a positive impact on domestic M&A activity," he points out. "The energy transition agenda continues to attract significant interest, supported by unprecedented dry powder and capital allocation towards ESG initiatives, while the international growth in data centres has driven recent M&A interest in Irish companies servicing this space."

Grit Young, Strategy & Transactions partner and head of Valuations and Transformation with EY, also notes the trend towards ESG investment. "Investors are alive to the opportunities presented by the net zero transition and are keen to play their part in funding it," she says. "Overall, the transition to a net zero economy is estimated to require US$125 trillion in investment globally by 2050. On the flip side, boards must be conscious that a poor ESG rating can act as a barrier to outside investment as the ESG reports from rating agencies are used by investors to inform their capital allocation decisions. Organisations without strong ESG scores are likely to be excluded from ESG funds and indices."

Another feature of the Irish market is continuing strong overseas interest. "Generally, two thirds of all Irish deals involve overseas bidders with UK and US based acquirers being the most active," says Micheál Martin, manager, PwC Ireland Corporate Finance. "Trade buyers continue to be the dominant buyer type, and whilst interest rates are stabilising, it is still the most expensive credit environment we have seen in a decade, which means trade buyers are in a position to compete more effectively with private equity on price."

Private equity buyers remain an important component of Irish M&A, Martin adds. "Over the last few years, private equity buyers on average have accounted for circa 20% of M&A deals in Ireland, though this declined in 2023 – consistent with reduced private equity activity levels across Europe and North America. Pent up demand from private equity is expected to drive an upswing in their participation in Irish deals."

Trade buyers continue to account for the lion's share of activity. "Interestingly, we continue to see the emergence of private equity-backed trade buyers participating in competitive M&A processes," O'Donovan notes. "The concentrated focus of M&A activity within the Irish mid-market affords family-owned and owner-managed businesses significant optionality in respect of achieving a full exit or de-risking by way of disposing of a shareholding – either minority or majority, initially.

"Given the wide range of options available to shareholders in realising value, it is critical that vendors are making informed decisions in respect of selecting a strategy that is aligned to underlying objectives. Furthermore, the increased optionality presents differing structures which need to be appropriately considered and negotiated."

AI is likely to be an important deal driver in the year ahead and beyond, says Young. "As one of the most disruptive and transformative technologies in decades, interest in AI, especially GenAI, remains very strong, driven by an array of factors including unprecedented public interest and high early adoption rates of what is still a nascent technology. GenAI's potential applicability across a wide variety of sectors and industries, as well as adoption potential across the c-suite is also driving the investment as the sector matures. The number of deals and investment is projected to only increase over the coming years."

While the market is more buoyant, deal processes still require careful preparation to be successful. "Investors and buyers continue to apply enhanced due diligence as part of any prospective acquisition or investment with a significant focus on the sustainability of the underlying trading performance," says O'Donovan. "Vendor due diligence is increasingly being recognised as essential in terms of identifying and positioning any key financial considerations in advance of launching a formal sale process and thereafter ensuring prospective bidders/investors adhere to process timelines. Deal structuring such as earn-outs, deferred consideration and so on presents buyers and sellers with an equitable opportunity to bridge any valuation gaps and has become a more common feature of transactions in recent years."

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Tying up the legal loose ends

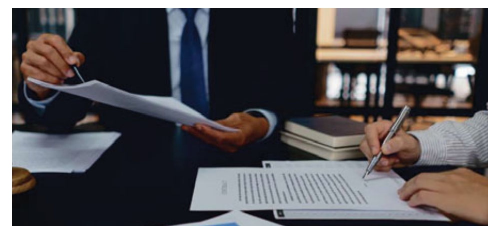
BARRY MCCALL

WHEN it comes to selling a business, the legal aspects can be every bit as important as the underlying financial fundamentals. Like any transfer of ownership, the vendor needs to ensure there are no legal impediments to the sale and that there are no potential surprises likely to arise during the process.

According to Diarmaid Gavin, a partner with law firm RDJ, business owners should prepare for the legal due diligence process and identify any potential issues or challenges as early as possible.

"A lot of people think due diligence already done when they have looked after the tax and accounts and so on," he points out. "But legal due diligence can involve a 20 to 30 page questionnaire in relation to all aspects of the business. It's quite intensive and should be done in advance of any sale process."

The company register and corporate minute books must be available, in order and up to date, he advises. "Every company is required to have a register showing shareholders, directors and so on. This can be seen as boring and often gets neglected. We sometimes get confused or blank stares when we ask for them. There is an increased focus on compliance in this area. If the beneficial owner register hasn't been maintained, you can run into real problems. That's the title deed of the company. Reconstituting a register can be onerous and expensive task. It can involve going back through years of share transfers, buybacks, director changes and so on."



Business owners should prepare for the legal due diligence process and identify any potential issues or challenges as early as possible.

Failure to keep the register up to date can be an indicator or other omissions such as share transfer transactions not being recorded or executed properly, Gavin adds. "You could potentially have people who are still shareholders even though they had sold out years before and they might be entitled to a share of the sale proceeds. You need to ensure it has all been done properly and that the relevant documentation is to hand."

Assembling the transaction team is an important first step in the process according to Adrian Benson, partner and head of Corporate and M&A with law firm Dillon Eustace.

"The transaction team can vary considerably depending on different factors such as the size of the transaction and the nature of the seller and target involved but common participants include senior management to assist with and play an important role in all aspects of the sale process, including engaging external advisers, marketing the target, dealing with due diligence and negotiating the transaction documents; legal advisers to carry out and co-ordinate the legal workstreams involved in documenting the transaction and transferring legal ownership of the target shares or assets to the buyer; accountants to advise on the tax and accounting treatment of the disposal; and a corporate finance adviser to source prospective buyers for the target and to assist in managing the sale process."

A pre-sale internal due diligence process may also be advisable. "Before actively engaging with prospective buyers, the seller may want to consider undertaking an internal sell-side due diligence investigation, which essentially involves reviewing the target and its operations from the perspective of a potential buyer," Benson notes.

He says the key benefits of carrying out a pre-sale internal due diligence review include: identifying and addressing potential issues or areas requiring improvement; identifying any consents or approvals required for the sale; assisting preparation of information memorandum or other sale materials; laying the groundwork for buyer due diligence; and assisting preparation of seller's disclosure letter.

There can also be complications regarding the ownership of the assets of the company. "If the proposed transaction involves the seller divesting a target company that forms part of a larger corporate group, or divesting a target business in circumstances where the seller or its group will retain other businesses, a key step in the transaction planning process is to consider and identify any separation issues that need to be addressed either before or at completion of the transaction," says Benson.

"Often, non-sale and sale assets will be mixed and held partly by the seller, on a business sale, or the entities to be sold, on a share sale, and partly by other seller group companies, the retained group," he continues. "Common examples of assets that may be shared in this way include land and buildings, intellectual property rights and IT infrastructure."

Where shared assets exist, he advises sellers to put appropriate arrangements in place to ensure that the target business or sale group either owns or has the right to use any shared assets it requires for carrying on its business, both before and after completion of the proposed transaction. After the transaction has completed, the retained group will continue to own or have rights to use any shared assets they require for their operations.

"Depending on the circumstances, it may be necessary to carry out a pre-sale reorganisation to transfer title to certain assets from or to the seller or the sale group or grant formal licences regulating the use of the shared assets following completion," he adds. "Where separation issues arise, the seller may find it preferable to develop and implement appropriate separation arrangements in advance of negotiations with prospective buyers with a view to ensuring that these arrangements are kept out of the disposal process and are addressed in the most straightforward and tax efficient way."

Other ownership issues can arise, according to Diarmad Gavin. "The business premises is one example. Is it owned by the business owner or by the company? Other assets like intellectual property are also very important. You need to make sure the company owns it or has very, very robust access rights to it. A company might outsource development to third parties, and you need to be very sure of IP ownership in that instance. If the company co-creates solutions with clients, you've got to make sure you're not blocked from your own technology platform. They are all items that will be looked at very carefully by a buyer."

Finally, both Gavin and Benson highlight the importance of data privacy and confidentiality issues during a sale process. Care must be taken to ensure that the company has a right to share information with a potential buyer and is not prevented from doing so by contractual obligations with employees or suppliers and customers.

In addition, sellers should ensure that everyone involved in the sale process is subject to appropriate confidentiality and non-disclosure agreements.

Tech, finance firms primed for mergers

A rise in available capital is just one factor driving a surge in M&A activity is some sectors, as analysts tell **Jillian Godsil**

TECHNOLOGY, Media and Telecommunications (TMT) is expected to remain the dominant sector for mergers and acquisitions (M&A) activity in Ireland.

Innovative and disruptive technologies in particular will continue to drive interest and fuel activity in this space. There is also increased deal volumes across business and financial services and a notable increase in interest levels in industrials, particularly precision engineering businesses at the intersection of life sciences and healthcare and those businesses servicing the data centre industry.

An emerging sector for M&A in Ireland is within Energy & Resources, principally renewable energy driven by investment in sustainable and clean energy projects.

Aine Sheehan, director, Deloitte sees most of the deal activity concentrating in the mid-market.

"The Irish market is abundant with family and owner-managed businesses with strong management teams, strong growth profiles and activities in attractive end markets.

"Ireland as a location is attractive for international investors – factors such as our location as an entry point to Europe, positive economic indicators, skilled workforce and tax friendly regime, combined with quality businesses in the growth phase of their lifecycle continue to drive mid-market M&A activity. Irish businesses also tend to internationalise early in their lifecycle which makes them attractive acquisition targets," says Sheehan.

While deal volume has remained resilient for Ireland relative to European peers in the past year, appetite to do deals was somewhat diminished in 2023 by factors such as rising interest rates, high inflation and geopolitical uncertainty.

An extended period of corporates focussing on cost cutting and building up cash, combined with anticipated interest rate cuts later in the year, sets the scene for driving strong M&A activity in the second half of 2024

Laura Gilbride, partner, PwC Ireland Corporate Finance, agrees that the M&A activity has remained strongest in the mid-market in 2023 and 2024 year to date.

Mid-market companies have an enterprise value ranging from €20m to €200m. Mid-market deals are holding up because they are easier to get done in a difficult financing environment and dealmakers are following a strategy of making a series of smaller deals to drive transformation and growth.

"It is worth noting, that although M&A activity is continuing to focus on mid-market deals, 2024 has already seen a number of mega deals announced including Hewlett Packard Enterprise's proposed US$14bn acquisition of Juniper Networks. In Ireland we saw Starwood Capital paying €791 million for 50% of Echelon Data Centres, and Phoenix Tower's €971m purchase of Cellnex Telecom's Irish mobile phone towers. These transactions highlight a greater willingness among dealmakers to do larger, more complex deals," says Gilbride.

"The Irish M&A market is poised for an upswing in activity in 2024, and some (but not all) sectors are already seeing an increase in deals. The market upturn will differ from previous ones, with a larger role for private credit and greater focus on value creation and growth.

"Pent-up demand from private equity, a stabilising interest rate environment and growing pressure for strategic transformation among companies will create more opportunities for deal activity," adds Gilbride.

Ray Egan, director, PwC Ireland Corporate Finance also believes a measured upswing in 2024 is expected versus 2023, during which approximately 330 deals closed in Ireland.

"Whilst dealmakers are understandably eager for the downward trend to be over, the upturn is expected to be more measured than the surge of dealmaking activity which occurred during late 2020 and in the record-breaking year of 2021," says Egan.

Generally, two thirds of all Irish deals involve overseas bidders with UK and US based acquirers being the most active according to Micheál Martin, manager, PwC Ireland Corporate Finance.

"Trade buyers continue to be the most active buyer type, and whilst interest rates are stabilising, it is still the most expensive credit environment we have seen in a decade, which means trade buyers are now in a position to compete more effectively with private equity on price.

"Private equity buyers are an important component of Irish M&A; over the last few years, private equity buyers on average have accounted for circa 20% of M&A deals in Ireland, though this declined in 2023 – consistent with declined PE activity levels across Europe and North America," says Martin.

Micheál Martin, manager, PwC Ireland Corporate Finance.

Grit Young, partner, Strategy & Transactions, Head of Valuations and Transformation at EY, sees particular interest in Artificial Intelligence.

"Investment is pouring into Generative AI (GenAI), according to the inaugural EY Ireland Generative AI Key Deals and Market Insights Report. Last year witnessed a remarkable surge in venture capital funds invested in the space ($27.9 billion), which was up more than three and a half times the investment recorded in 2022 ($7.7 billion). During the first quarter of 2024 more than $7.5 billion was invested in the space globally and EY projects that, based on these trends continuing across the year, total global investment is estimated to reach more than $30 billion in 2024," says Young.

Despite a slowdown in investment in many other industries over recent years due to interest rate increases, inflation and the shift back to more familiar lifestyle patterns following the end of the pandemic, VC interest in GenAI remains robust and has been on an exponential rise with $27.9 billion invested in 2023, compared to just $1.1 billion in 2018. When compared with 2022, investment funds were more than three and a half times greater. This can largely be attributed to notable investments by major technology companies.

"Another area of focus is in ESG, boards need to work with the management to identify the major trends in ESG investment and understand how they are likely to impact the organisation's ability to secure funding. They must also take steps to ensure they are capable of influencing their organisations' capital allocation decisions," says Young.

John Bowe, partner, Mazars, views a key driver of M&A activity as the availability of investment capital earmarked for Irish companies.

"Irish and international private equity funds all have capacity to invest and are looking to back strong management teams on their growth journey. Moreover, corporate balance sheets are strong currently and there is a strategic focus on growth through acquisition of complementary products and services.

"While deal volumes dipped in 2023 compared to 2022, mainly due to economic uncertainty and escalating interest rates, this downturn has created pent-up demand for transactions. As uncertainties subside, we expect deal activity to rebound, with heightened activity expected throughout 2024," says Bowe.

Sheehan adds that the valuation gap between buyers and sellers is expected to reduce as factors that were supressing valuations, such as high inflation, interest rate volatility and margin suppression are starting to stabilise.

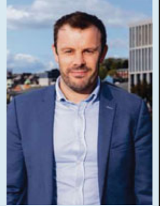
"We're seeing deal structuring come into play where any such gap still exists. Private equity will continue to double down on their investments and use M&A as a means of value creation and maximising returns. One of the most active buyer camps currently is private equity backed companies. These businesses are using M&A to enhance organic growth rates, with financing from their cash rich PE owners," says Sheehan.

The dominance of both domestic and international private equity investment in Irish business is the most significant trend.

Bowe concludes: "As a result of the ever-growing availability of funding options, another trend emerging is business owners having earlier conversations around de-risking and taking on growth capital."

Key advice on MBOs

A guide to Management Buyouts by **James Loughrey,** Managing Partner, MC2 Accountants



James Loughrey of MC2 Accountants.

Pitfalls to avoid:

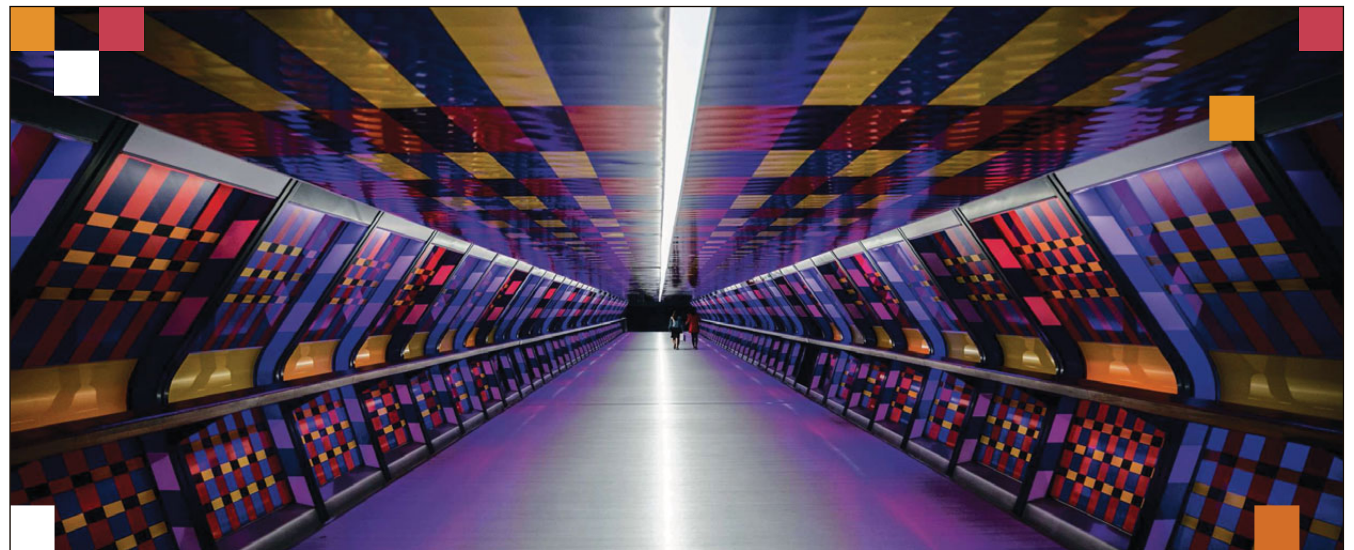
- If management think that the value is primarily tied in with themselves, they could potentially undervalue the business in the eyes of the owners. This could cause resentment on the owner-side and result in wanting to make the deal competitive i.e., go to market for a 3rd party sale.
- The management team under-estimate the financial commitment required for the buy-out, through debt, equity, personal guarantees etc. If using bank finance to fund the buyout, management could be required to fund up to 40% of the transaction through cash/equity.
- The management team are too focused on the buyout, at the detriment of business performance, ultimately impacting negative on the valuation.

Important steps to take:

- Management and the vendors agree up front and at the earliest stage, a valuation for the business and the mechanics of the sale e.g., will the transaction be a cash-free, debt-free acquisition; what are the timelines for deferred consideration payments, if any.
- Having a strong, robust business plan that is deliverable and has been stressed for macro and micro market changes e.g., increases in interest rates. This is particularly important around the cashflows of the business with regards to the timing of any deferred consideration payments.
- Having open communication on all sides, especially when unexpected delays arise.

As the process can be long and distracting from daily business, can you explain the importance of seeking professional support from the outset?

All management buyouts should involve legal, tax & corporate finance advisors. As mentioned previously, a key risk for a management buyout is that internal senior resources within the business will be focused on the transaction at the detriment of business performance. Having corporate finance advisors to structure and manage the transaction, as well as regular communications to keep all parties informed of progress, is important to ensure management can continue to focus on the business while momentum is kept in the transaction.



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Preparation key to successful deals

Full, open and clear information is vital for all parties engaging in M&A talks, leading advisers tell **Jillian Godsil**

FINANCIAL advisors work with founders who are selling their business, taking on investment or a funding partner. So, it is really important to listen and fully understand what the founders want and are looking for in a partner.

Money is the commodity when looking for a partner, so the job of a financial advisor is to help the founder understand the various options and position the business in the best light for investment.

Many factors affect the value of a business and there is always a gap between buyer and seller expectations in any transaction. If you run a competitive process, a founder will often get multiple offers on their business, ultimately giving the market view on a range of valuations. A founder should only decide if they are selling once they see that range of offers.

John Bowe, partner with Mazars, says that preparation is key.

"The more prepared you are the better chance of achieving your expectations. A slip in current trading can derail expectations. If the business's performance during the period under review by potential investors falls short of expectations, this will inevitably influence the valuation. Similarly, for instance, losing a significant contract during the due diligence process will also have an impact," says Bowe.

Áine Sheehan, director, Deloitte, is very sensitive to her clients' concerns. She points out that often time, effort and even the family name can be attached to a business, making the process both a business transaction as well as a personal one.

"Getting to know your client and understanding their motivations for sale are key. Why are they choosing to sell now? What do they want to do next? Are valuations just too strong to overlook? Are they ready to move on to the next challenge or opportunity? Do they wish to retire? Perhaps, they are looking to de-risk but continue to contribute to the next phase of the company growth. Are they driven to maximise valuation or is finding the right home for the business and its people just as, if not more important, than the size of the cheque?

"All this information and insight will help formulate a bespoke process that seeks to achieve their objectives with respect to M&A. It speaks to the type of deal they are looking for, a minority or majority sale, a strategic investor that will partner with them on the next phase of growth or a buyer for the business that would give it access to new customers, new markets, skills and compelling synergies," says Sheehan.

She also stresses that it is important that there are upfront discussions with respect to valuation before embarking on a process. This involves doing research, checking out what have similar companies traded for recently, or what are similar quoted companies trading at in the public markets.

Professional advisors have a vital role to play in working with buyers and sellers in any M&A deal, understanding the motivations of both sides. Picture: iStock.

"Deals are taking longer than they have in the past as they attract heightened degrees of scrutiny by boards, investment committees and lenders. Sellers should be aware of the likely timelines, their time requirements for the deal and prolonged distraction from 'business as usual," says Sheehan.

Ronan Murray, Corporate Finance partner at EY, says the sales process can be a challenging time for companies. Internal resources can be stretched with investors requiring certain information before they enter into a formal agreement. An experienced M&A advisor is important as they will manage this information flow to keep the process as compact as possible, allowing management's focus to remain on the business. This ensures management are not distracted from the day-to-day operations of the business and significantly reduces the risk of a business underperforming in the months prior to a transaction closing, which will help to maintain value.

"At the beginning of any process it is critical to set out the key objectives for all stakeholders. This involves clearly understanding the potential exit options available (e.g. a full sale or a partial divestment), upfront versus deferred consideration/earn-outs and shareholder preferences on continued involvement in the business post transaction. This helps to manage expectation for the vendor and also helps define the rationale for sale when discussing a transaction with potential buyers," says Murray.

"Sellers should engage with advisors early in the process to help in setting realistic value expectations before the process starts. Through their experience and resources, corporate finance advisors play an important role in guiding and defining what a successful transaction is for a seller. Sellers should understand their business' value drivers more than the buyer, so the onus falls on them to demonstrate the maximum value," he says.

The key is to understand the various funding options and their implications for facilitating future growth, mitigating risk for founders, and determining the level of control relinquished according to Bowe.

"You are trying to align a founder's personal and business needs with the types of funding available. Clearly laying out the funding options available and what are the differences between debt and equity and within equity, between minority and majority ownership.

"Factors such as the seller's goals with regard to staying on or exiting, debt capacity within a business, existing management team capability, and shareholders' openness to working with new structures, new board members, and new shareholders all come into play," says Bowe.

Businesses should adopt a funding structure which strikes the balance on its risk tolerance – retaining ownership or control of shares versus interest payments and collateral requirements being onerous on the business.

When considering funding structures that will support a business achieving its strategic objectives, it is important that the business is not exposed to undue financial risk. The profile of cash flows, predictable or changeable, will dictate the level of leverage that could be tolerated.

The stage in the Company life cycle or underlying market will also dictate the level and source of funding that is available – stable and mature business will likely tolerate higher levels of debt versus early stage and high growth.

"Depending on the strategic objectives of the business, an equity investor can often bring more than just cash to the table and ultimately help accelerate shareholder value creation," says Sheehan.

Prior to pursuing a management buy-out, it is imperative that the vendor consider all liquidity options available to the company, which may range from a 100% strategic sale to a minority private equity investment.

James Loughrey, managing partner at MC2, stresses that all management buyouts should involve legal, tax and corporate finance advisors.

John Bowe, partner with Mazars.

"A key risk for a management buyout is that internal senior resources within the business will be focused on the transaction at the detriment of business performance. Having corporate finance advisors to structure and manage the transaction, as well as regular communications to keep all parties informed of progress, is important to ensure management can continue to focus on the business while momentum is kept in the transaction," says Loughrey.

Murray concludes: "Stakeholder motivations in a buyout can be intricate, but they ultimately revolve around one core aspect: value. Existing shareholders seek fair compensation for their years of hard work in building the company, while management want to ensure they purchase the business at a fair price to generate future value," says Murray.

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Meet the M&A experts: Step-by-step guide to navigating the processes

DANIELLE BARRON

AS business owners reflect upon their options within M&A, here are the views of a selection of experts who can offer invaluable experience in considering the steps to take – from merging with new partners to full sales and acquisitions, through to successfully optimising the outcomes with a change of ownership

Philip Lea, Partner, Corporate and M&A, Dillon Eustace

A key step for any company taking on investment or merging with new partners is first to critically analyse why they are taking on the investment or new partners. This analysis is critical in setting out the basis for the process and will help companies to identify who is the appropriate partner for their plans and what is the most appropriate structure for achieving the aim (i.e. the "who" and the "how" of the investment).

The "who" is getting to know your future partner – this is done through due diligence. The scope and breadth of this due diligence will vary on a case by case basis and your advisors will be able to guide you on the recommended approach.

Leaving aside any technical due diligence (legal, financial, etc) it is very important that companies assess whether investors will be a good partner to the business from a commercial perspective and will align with the Company's goals in taking on the investment.

Companies can assess partners by looking at the investors track record and discuss with trusted advisors any market intelligence.

Personal relationships are also very important and companies should meet with the investment team and have clarity around who will be working with the company on a regular basis (e.g. the investment advisors and/or board nominees). It is also important to understand what are your prospective investment partners goals for their investment – why do they want to invest in your company, what is their goal and what is their timeline for achieving it.

Companies will need to assess whether respective goals align. All of this then feeds into how the investment will be structured and how the group will be governed and operated following the investment.

It is very important that companies take appropriate legal, financial and tax advice on what is the most appropriate structure for their stated objectives and ensure that any investment documents are clear and balanced so that parties know their rights and responsibilities. If the investment works out well for all parties then it may be that parties do not have to refer to the investment agreements again but it is critical that these documents provide a clear foundation so that if a dispute arises there are adequate structures in place.

It is very important that companies take appropriate legal, financial and tax advice in any M&A deal negotiations.

Martin Kelleher, partner and Head of Corporate at Mason Hayes & Curran

We advise clients who are considering a sale to conduct a thorough review of their business. This ensures that the key diligence items, which potential buyers will want to review, are in shape before initiating the sales process. A proactive approach reduces the likelihood of unexpected issues and delays during diligence. Important areas for review include not only internal items such as the statutory books and employment contracts but also key value drivers such as IP, commercial partnerships, and customer relationships.

It is crucial for sellers to fully understand and agree to the proposed terms of sale, including any deferred or contingent payments, before proceeding to detailed diligence and legal negotiations. If the sale involves contingent consideration, a buyer should clearly understand what metrics need to be achieved to secure this additional consideration. As the buyer will control the business post-sale, the seller should understand how the buyer intends to operate the business. Seller protections should be documented in the legal agreement to ensure that the business is managed in this way in order to maximise the opportunity of achieving the contingent consideration.

If a seller retains a minority stake in the company post-sale, it is essential that they consider the future management of the company. Without specific contractual safeguards, the buyer may have considerable autonomy in how the business is run. Sellers should consider how they will secure future value from their minority shareholding, including the possibility of negotiating an option to require the buyer to subsequently acquire these shares, or providing for a future onward sale of the target company.

Ronan Murray, corporate finance partner, EY

It's essential that detailed conversations take place between prospective partners in a merger, or buyer and seller well before a deal is concluded to agree on an integration and growth strategy. Protections for both sides around the strategy should then be built into the transaction legal documents because growth is not assured just because the deal has concluded.

It is becoming common practice for a buyer or investor to include a contingent element for post deal integration in their offer. This is an effective method to keep the seller incentivised to realise the synergies between the two entities and deliver value for all. Ensuring that management has identified areas of product, customer or supplier overlap early in the process will unlock cost and revenue synergies post-deal and ensure that deal value isn't eroded.

In many instances, it is the people and their expertise that are key to the enterprise value of organisation and keeping them engaged and incentivised in particular during the integration period is ideal to maximising value for all.

Post-deal integration can prove a challenge, even for the most experienced consolidators in the market. Therefore, EY's Strategy and Transactions division has a dedicated team providing M&A integration services to assist clients with the integration journey and deliver the improved post-deal operating models to enhance value.

Colm Manning, corporate/M&A consultant with William Fry

In a full acquisition scenario, be thorough in planning the process for integrating the target business operationally.

Completing an acquisition can sometimes be drawn-out and "deal fatigue" can become a factor, but completing only marks the beginning of the actual business integration process. Be it from a personnel culture perspective or how the buyer envisages its systems interacting with the target's, it is essential for the merging parties to plan for and align on post-completion integration.

Doing so avoids gaps or a drop-off in the target's service levels/productivity, which could impact on revenue.

The earlier the merging parties start thinking about the business integration process the better. For example, if the target entity is moving out of a seller group, buyer's diligence should identify if there are any sell-side transitional services that may be required by the target for a period of time following completion as it moves into the buyer's group.

Buyers that have completed multiple acquisitions and have real-world experience of integrating a target business are the most successful. If it is a buyer's first time making an acquisition, double-down on efforts around how the target business will operate from day one after completion.

Vital steps to optimising partnerships

Due diligence steps must be addressed with great care, leading business advisers tell **Barry McCall**

THERE is a natural tension to M&A transactions. On the one side, the seller wants to maximise the price they achieve for their business while on the other the buyer naturally wants to get the best value possible from the deal. But it is not a simple question of haggling over the price and splitting the difference between vendor and purchaser expectations, it's a lot more complicated than that.

"In an environment where financing a deal is more expensive than ever, and there is wider macro-economic and geopolitical uncertainty it is increasingly challenging to deliver value from M&A," says Ray Egan, a director with PwC Ireland Corporate Finance.

"The results of a PwC and Mergermarket study of senior global executives, found that only 61 per cent of buyers believe their last acquisition created value. However, acquirers who prioritised value creation through careful planning from the start of the deal clearly outperform industry benchmarks. Companies that establish rigorous criteria for value creation early on and who carefully plan all aspects of integration are best positioned to maximise their returns from a transaction."

In an uncertain geopolitical and macro-economic landscape and facing high financing costs buyers are increasingly placing a greater focus on cashflows and maintainable earnings, according to EY Corporate Finance partner Ronan Murray.

"The due diligence process is a very important part of the deal to optimise the value and identify any future issues which may arise," he notes. "As well as financial due diligence, other diligence processes including commercial, tax, IT and ESG are becoming increasingly common and of greater value to buyers to assess all aspects of both the business and the wider industry in which it operates and the position and market share of the business in the industry and growth potential. This allows the buyer to scrutinise the target's financial records, IP, assets and liabilities, regulatory compliance and operational challenges as well as identify potential risks and market insights which can further inform whether the sellers' target value aligns with its actual value, considering all factors."

Thorough due diligence during the acquisition process can help buyers to mitigate risks, optimise valuations, capitalise on synergies, and ensure compliance from a governance and legal standpoint, he points out. "This enhances the overall success of all transactions in the M&A space."

Other factors can come into play as well. "Some buyers have minimum threshold levels of return and their valuation will be struck on a basis which allows them visibility on achieving these returns," explains Aimee Corcoran, senior manager with PwC Ireland Corporate Finance. "They will typically discount their anticipated future cash flows from the business to determine the valuation, with the discount rate used reflecting the buyer's cost of funding. Buyers will also typically have regard to market multiples as a sense check on their calculated value."

Taking a long view is advisable when entering not a transaction. "Creating value is the ultimate goal of any M&A transaction, the reality, however, is that value creation in M&A is often a challenge, with many deals not living up to initial expectations," says Derek Murphy, managing director, Financial Advisory with Deloitte. "This is often driven by either a lack of a comprehensive due diligence or Buyers underestimating the cost of integration, as well as accurately valuing or implementing synergies.

"From the start of the transaction, integration and synergies should be a key consideration in the due diligence phase, and buyers should seek to identify and place a value on each synergy and build this into its valuation model," he adds. "Having a very clear picture of the risks and the opportunities of the deal and a comprehensive integration plan ensures a far greater chance of a successful acquisition in terms of return on investment and placing the business on a sound footing for growth and prosperity in the long term."

Indeed, what happens after the deal is done is critically important for value creation.

Due diligence in the acquisition process can help buyers to mitigate risks, optimise valuations and ensure compliance. Picture: iStock

Aimee Corcoran, senior manager with PwC Ireland Corporate Finance.

In many ways, the real work begins with the integration of the acquisition into the buyer's existing business. "Buyers should consider integration and synergy delivery from the outset of assessing a transaction as part of their value creation plan," says PwC Ireland Corporate Finance partner Laura Gilbride. She advises buyers to have a detailed integration and synergy plans in place at the point of signing.

"The first three to six months of the integration process are pivotal, regardless of whether it is a private equity or trade transaction," says Murray. "Clear communication about deal rationale, growth trajectory and strategy and integration process are crucial to ensure a successful transition for the business into the next ownership stage."

Culture is critical, according to Gilbride. "Talent management and human capital are key drivers of whether businesses deliver post-deal. The results of a PwC and Mergermarket study of senior global executives, found 82 per cent of companies who say significant value was lost in an acquisition lost more than 10 per cent of employees following the transaction. Retaining key people and getting their buy-in to the future direction of the enlarged business is critically important."

This applies to key management in particular, says Murray. "With a private equity majority sale, the management team is very often incentivised via a share scheme or tied into an earn-out or deferred consideration mechanism. It is important that clear goals, targets and strategies are set out from the beginning as there is a shift in the dynamic due to a change of control and decision-making process with a new board in place. This can result in delays as the board and management work to align on the overall direction and strategy for the company."

Funding the acquisition is also an important consideration. "While the cost of debt is currently going in the right direction, it is still expensive," Murphy points out. "We often work with clients who are preparing to embark on an acquisition journey and through smart working capital optimisation, a significant level of cash can be freed up to support acquisition funding."

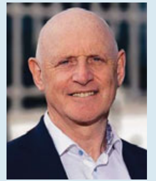
On the vendor side of the equation, Ronan Murray says that favourable results tend to be achieved when sellers proactively engage in market readiness and thorough preparatory diligence. "This safeguards value, especially in a market where M&A leaders anticipate valuation becoming more stringent, tipping the scales in favour of buyers," he says. "Engaging experienced advisors, guiding the dealmakers from the outset lead to the most successful transactions."

Murphy also emphasises the need for early planning. "The secret to a successful sale and maximising value lies in the preparation," he contends. "It is important for a seller to take the time to understand what is involved in a sale process and how a buyer is likely to value the business. Sellers often don't fully appreciate the mechanics of a valuation and the fact that the initial offer from a buyer is typically adjusted to factor in cash, debt and working capital at the date of the acquisition to arrive at the equity value. Sellers should focus on implementing certain measures, at least twelve months in advance of a transaction but ideally longer, to maximise the equity value."

Putting the best foot forward is a must. "It is really important to ensure that every aspect of the business is showcased to its maximum potential," Egan advises. "From a financial perspective it's about highlighting the earnings profile and cash generation of the business in the recent past and into the medium term."

Key advice on M&A deals

Q&A with **Jim McCarthy** of MC2 Accountants



Jim McCarthy of MC2 Accountants.

What steps can buyers take to optimise the value of an acquisition?

It is crucial to develop a clear integration plan that outlines how the buyer will merge the operations, technologies, and cultures of the two entities to achieve efficiencies and synergies. Buyers should also strategically negotiate the purchase price and terms to ensure they align with the long-term value they anticipate from the acquisition; this may include earn-outs or deferred payments based on future performance metrics.

How do you value a target to ensure you don't overpay?

Valuation methods can depend on the nature of the trading entity, current stage of the business lifecycle and the industry that it operates in. We consider the strategic value the acquisition brings, such as potential synergies, market expansion and intellectual property, which might justify a premium beyond the financials alone.

In the post-acquisition phase, what actions should buyers consider?

Buyers should prioritise the integration of operations, cultures and systems to maximise synergies and efficiencies between the merging entities. Communicate transparently with all stakeholders, employees, customers and suppliers. Review the combined entity's strategic objectives and performance metrics to align them with the new business goals.

What steps should sellers take to maximise the price they achieve?

Sellers should thoroughly prepare their financial and operations info for due diligence. This involves ensuring all financial statements are accurate, complete and that the information is current, which helps to build credibility and trust with potential buyers. Enhancing the business's value can also be achieved by identifying and cultivating key growth opportunities, demonstrating clear and sustainable future revenue streams. Additionally, engaging professional advisors like MC2 to market the business to a wide range of suitable buyers can assist with the overall process, potentially leading to a higher sale price.

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Keeping in line with new regulations

Legal experts advise all parties in M&A deals to be aware of changes to EU law, reports **Jillian Godsil**

Two new pieces of legislation are set to change the rules in relation to mergers and acquisitions. Picture: iStock

AS merger and acquisition (M&A) activities increase, increased pressure from new regulatory scrutiny as well as the changing role of warranty and indemnity (W&I) insurance in M&A transactions are keeping solicitors and their clients on their toes.

New regulation

The concept of regulatory clearance of deals is not new. Traditionally, many deals are subject to the Competition Consumer and Protection Commission (CPCC) scrutiny and until this year, the threshold of the deals was extremely high and had to be above a value of €60 million. However, two new pieces of legislation are set to change the rules.

The first adjustment is the lowering of the threshold for the CPCC to investigate mergers and acquisitions. It was particularly set up to examine potentially sensitive areas such as technology, but it can also look at hyper local situations.

Diarmaid Gavin, partner in the corporate department with legal firm RDJ LLP, explains how it works: "For example, consider a small village with two fuel filling stations. If the same person bought both, then the CPCC may get involved, and no one wants the CPCC knocking on their door after they have completed the transaction. So, we advise our clients to engage with the CPCC ahead of any possible worries, just in case," he says.

The second change is Ireland's first piece of investment screening legislation, the Screening of Third Country Transactions Act 2023 (the FDI Act), which is expected to commence in the first week of September 2024.

Philip Lea, partner, Corporate and M&A at Dillon Eustace LLP, says the FDI Act will give the Irish government power to review and prohibit certain third country (i.e., non-EEA) investments into critical Irish industries based on a range of security and public order criteria.

"A notification will be required where the transaction involves a third-country undertaking or person connected to that undertaking and a change in control over an asset or undertaking occurs or where the transaction relates to, or impacts on, one or critical sectors; and the cumulative value of the transaction in the period of 12 months before the date of the transaction is equal to or greater than €2 million.

"Similar to the merger control regime, the Minister of Enterprise, Trade and Employment may 'call in' transactions that are not notifiable but where the Minister believes the transaction affects, or would be likely to affect, the security or public order of the State. Dealmakers will need to be prepared to undergo this investment screening where a non-EEA country is involved in the transaction. Given the prevalence of US and UK investment in Ireland and the broad range of critical sectors, the FDI Act is a significant shift in FDI M&A," says Lea.

The Act is being implemented in Ireland following an EU wide regulation.

Diarmaid Gavin, partner in the corporate department with legal firm RDJ.

Philip Lea, partner, Corporate and M&A at Dillon Eustace.

Gavin says: "In order to protect Europe, the EU needed all the member states to put in place a screening regime, so that the Minister could check a transaction if requested by his French or Swedish counterpart, who might have a concern about something in their jurisdiction.

"What it does effectively is to allow the Minister to potentially prohibit or modify a transaction on the grounds of public security or public order grounds," he says.

The Irish legislation determines that the target must operate the 'critical' element of its business, or the critical infrastructure must be located in Ireland.

Sectors covered under the act include infrastructure in energy, transport, water, health, communications, media, data processing, aerospace, defence and sensitive facilities as well as land and real estate crucial for the use of such infrastructure.

It also includes critical technologies and dual use items including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, quantum and nuclear technologies as well as nanotechnologies and biotechnologies.

"This new law does not just affect mergers and acquisitions; it can cover an investment or someone taking a stake in a company. It can also be used to patrol the supply of critical inputs, including energy or raw materials, as well as food security," says Gavin.

Finally, access to sensitive information, including personal data, or the ability to control such information, and the media is also covered.

"And for the purposes of the act, the definition of third parties is anyone other than the company or individual based in the EU, Switzerland or the European Economic Area. That includes the UK and the US which are a big source of foreign direct investment in Ireland," adds Gavin.

Risk assessment

Adrian Benson, partner and head of corporate and M&A at Dillon Eustace LLP, explains that typical contractual provisions, used in a sales agreement to deal with risk, are warranties and indemnities, (W&I). However, when negotiating W&I the parties' interests are often far from aligned and there may be great reluctance to give a buyer comprehensive W&I at all. Therefore, W&I insurance is a specialist insurance product increasingly being used in private M&A to provide an amicable solution.

"W&I insurance is designed to provide cover against financial loss that may arise from a breach of warranty in an SPA, on a share sale, or from a claim under a tax covenant. It is far more commonly encountered on share deals than asset deals though this is largely accounted for by the fact that most private M&A in Ireland is structured as a sale of shares," he says.

In the case of a policy taken out by the buyer, W&I insurers or underwriters effectively step into the shoes of the seller with the intention of providing, as far as possible, back-to-back cover with the position agreed in the Special Purchase Arrangement (SPA) and other transaction documents. With the insurer providing recourse for the buyer, the seller may be able to cap its liability at a nominal or at least lower amount than would otherwise have been possible, enabling it to achieve a cleaner exit.

The use of W&I insurance is becoming more prevalent in Irish transactions to limit the seller's liability under warranties. Depending on the level of cover acquired, the policy can be used to reduce the seller's liability to as low as EUR 1. However, the seller typically retains risk for the title and capacity warranties, and full liability will apply if the seller has been found to have acted fraudulently or engaged in wilful misconduct or wilful deceit. The policy generally mirrors the warranties set out in the share purchase agreement, but the insurer may modify or carve out certain warranties and indemnities. Many of these limitations and carve-outs may, however, be covered under the policy for an additional premium.

If W&I insurance has been proposed by the seller, the seller may offer to contribute to the premium, either up to a set maximum amount, percentage of cost or what the seller feels is a reasonable policy limit, with any additional requirements, enhanced or higher policy limits options being for the account of the buyer.

"W&I insurers typically require that the parties involved accept a certain portion of the risk, and this is reflected in the policy retention (also known as the excess). This is the financial threshold beyond which the insurer will become liable under the policy and below which it is generally not liable," says Benson.

Minimising risks when assessing your M&A funding options

DANIELLE DARRON

DECISIONS, decisions. There are obvious pros and cons with the various sources of finance to fund mergers and acquisitions (M&As), but the decision will often hinge on what is readily available and appropriate to each individual scenario.

Once that's finalised, the careful process of allocating risk begins and the selection of the most appropriate mechanism will also require careful consideration.

Martin Kelleher is partner and Head of Corporate at Mason Hayes & Curran. He explains that each of the three sources of finance – debt, vendor finance and private equity – has pros and cons.

"Each should be evaluated on the basis of cost and governance," he explains. For debt and vendor finance, this cost includes arrangement fees, interest payments, and capital repayments. For equity, it represents the lost future value of the shareholding which is to be held by the equity partner.

"In terms of governance, for debt and vendor finance, this will be the restrictions imposed on the business such as maintaining financial covenants, and consents required for certain business decisions. For equity partners, this will be the minority protections required by such shareholders as well matters such as board seats, restrictions of share transfers," Kelleher says. "An equity partner will expect to play a more active role in the management of the business than a debt provider."

David Martin, capital and debt advisory partner with EY, says that when it comes to sources of finance for M&A, debt can have many benefits for businesses, the most important being maintaining control.

"Unlike other capital products, it is a non-dilutive source of capital that can increase returns for shareholders," he explains. It can also be a cheaper form of capital – despite the interest rate environment over the last 18 months, debt continues to be a suitable product to fund your business and its acquisition activity, he adds.

Martin notes an interesting trend currently in the Irish market is that of combining debt sources. "Where previously, many Irish borrowers saw the choice as being between a bank or an alternative lender, today many will now work with both a bank and a non-bank lender to fund their acquisition plans, demonstrating that banks and non-bank lenders can co-exist, which is certainly the international convention."

It's also worth noting, he says, that over the last 18 months there has been a noticeable increase in the number of international debt funders looking to deploy capital in the market. This demonstrates international players' positivity in relation to the market, and means greater choice and competition amongst lenders, resulting in better terms and conditions for Irish borrowers.

"Term loans, working capital facilities and long-term debt products including private placement are all areas with multiple products in the marketplace, and this allows borrowers to be more innovative in their debt raising and allows them to focus on diversifying their debt products, repayment profiles and ultimately their refinance risk."

In terms of leverage, EY has also observed a trend, both domestically and internationally, of the "flight to quality" from the banks. "As a result, we have witnessed borrowers getting competitive terms with good margins for both acquisitions and refinancing."

Martin advises that whilst there can be pitfalls of taking a significant amount of debt, these can be attenuated by a considered funding plan. "A well-thought out debt plan will mitigate many of the risks of raising debt, and assessing your cash flow requirements over the tenor of your debt facilities will allow for mitigating against overleveraged," he says. "Furthermore, allowing buffers in your debt facilities for the 'unexpected events' in an acquisition will allow for headroom against defaults."

He also points out that the deep pool of capital providers in the market has contributed to an increase in the array of products in the marketplace. "This has allowed businesses to be savvier in structuring their debt facilities to allow businesses to match their funding requirement with the appropriate funding solution."

Once the financing plan is drawn up, focus must go to allocating risk - especially given the large sums often involved in M&As. Diarmaid Gavin, partner with corporate law firm RDJ, points out that when someone is buying a business is buying a company, there are no statutory protections in law: "the principle of caveat emptor or 'buyer beware' very much applies."

Gavin says that while potential buyers will carry out extensive due diligence, across the legal, financial, operational and technical aspects of the target company, warranties and indemnities are the two mechanisms that provide them with protection in the event of the deal going south.

Warranties are statements of fact that a seller would make in relation to the business, which, if they subsequently transpire to be untrue, will give the buyer then to potentially sue for damages, explains Gavin. "Typical warranties might be around the ownership of the company, the accounts, or that there's no litigation in the business. What they do is that they generally confirm what the buyer has learned during their due diligence process. Warranties are given at a particular moment in time, they aren't particularly future-looking."

But a warranty that transpires to be untrue allows the buyer to sue for damages, he says. "For example, if a warranty was given that the company wasn't subject to any litigation and it turned out there was a big claim that they hadn't told the buyer about, the buyer will be able to sue for the difference of what the business was worth if the warranty was true and what the business is actually worth following the warranty breach."

If the buyer is aware of any potential issues with the target company, however, the alternative is an indemnity, which is essentially a promise to pay for any liability or loss that would be incurred in certain circumstances.

"Indemnities can be used where a particular problem is known, such as an ongoing court case where the outcome is not yet known," explains Gavin. "It is designed to provide compensation on a euro for euro basis. Warranty deals with the unknown risks whereas indemnity deals with the known risks but are unable to quantify it so can't reflect it in the price."

Other mechanisms outside of formal warranty and indemnity include escrow, whereby money is held back from the deal and instead put into a third party's account. "This would be for a percentage of the purchase price and can be held for a few months or even up to two years," Gavin says, adding that these can be quite commonly employed in M&As.

Warranty and indemnity insurance is a product that has become more and more popular in the last number of years.

"A buyer may not always be able to get the level of warranty coverage they desire in the transaction or equally the sellers may not be willing to give that level of coverage," says Gavin. "For example if you are buying the business from a liquidator or a receiver, they just don't offer warranties, so there is no coverage. Warranty and indemnity insurance plugs the gaps, providing an insurance policy that will pay out in the event of a claim."

He notes that there are now a number of providers of W&I insurance, mostly based in the UK but servicing the Irish market. Of these products, buyer-side policies are by far the most common, whereas seller side policies are less common and tend to be more expensive. "W&I insurance will only cover areas that have been subject to the due diligence exercise and will only cover risks that are unknown at the time of the deal going through."

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Soft skills at heart of successful deals

Soft skills are vital to ensuring all parties stay on track with a merger and acquisition talks, as industry experts tell Danielle Barron

MERGERS and acquisitions (M&As) happen for all sorts of reasons, and while hammering out the best deal for both parties requires mettle in the boardroom, managing the transition on the ground often requires a more delicate touch.

M&A experts say there is an increasing focus on the "soft skills" necessary to ensure any deal is a success, with clear and transparent communication of all aspects of the story of any merger or acquisition to all of the stakeholders involved.

A careful approach to business integration, momentum and talent management will not only help to ensure that the deal goes ahead, they say, but will mean it is viewed as an overall success for everyone involved.

"Every transaction has a post-completion tail on it, be that a liability arising under the warranties, agreeing the release of holdback/escrow consideration, calculation of additional consideration under an earn-out or how a party navigates its non-competes," explains Colm Manning, an M&A consultant based in William Fry's Cork office.

To minimise any issues arising as the parties continue to deal with each other post-completion and to smooth over any difficulties that may have arisen in the negotiation process, it is critical that all parties consider the deal a good news story or to have some form of "win", he says.

"The transactions that go well tend to be the ones where the outcome is considered a success for buyer, the seller and the target. If a party feels hard done by, that could be amplified in the context of further post-completion interaction where a willingness to agitate might more readily come to the fore."

The success of an M&A transaction does not depend solely on the outcome of the negotiations, agrees Adrian Benson, head of corporate and M&A with law firm Dillon Eustace.

In negotiating a deal, all parties must balance the need for confidentiality with the need for open and honest communication with employees. Picture: iStock.

He says the completion of the transaction can often just mark the beginning of an often rocky road to integration.

"Most buyers will want to ensure the successful integration of the new business into its existing business activities but planning for integration should begin when the acquisition is first considered," he says. "Having an integration plan in place is critical and ensures that the views of all parties involved are aligned."

Benson says the success of any M&A transaction will first depend on "open and honest" communication with management and employees. "This is essential to manage the natural concerns that managers and employees will hold about changes to the business following an acquisition," he explains. "In practice, success is much more likely if senior managers are involved and brought on-side early in the acquisition process."

Timing is everything, however – he notes that the buyer should balance that need for open and honest communication with employees with the need for confidentiality while the overall sale negotiations are still underway.

Involving a select number of the target's personnel in the transaction process is often unavoidable, agrees Manning, who says the buyer will likely want to meet with and gauge certain target personnel to ensure there is sufficient deal buy-in among the management group, while the seller will often seek to rely on a small number of trusted lieutenants within the target's employee population to help the deal run smoothly, including inputting into the operational, financial, tax and legal diligence exercise.

Colm Manning, an M&A consultant based in William Fry's Cork office.

"What is often a delicate negotiation process can be made even tricker if employees begin voicing concerns around job security or terms and conditions, as they naturally will if word gets around that a new owner is coming in."

The use of "golden handcuffs" to retain key staff can have advantages and disadvantages for both the employer and the employee, Benson adds. "The advantage for employers is the ability for business continuity with loyal staff who are familiar with the day to day running of the business. It may also result in a reduction of staff turnover and can increase the motivation within the workforce."

But offering a select number of employees attractive incentives to the exclusion of others can sometimes result in employee resentment and/or demotivation for those excluded, he notes.

Benson also points out that the culture of the target company must be well understood by the potential buyer. Social, material and/or ideological culture may differ considerably between the acquirer and the target company.

Adrian Benson, head of corporate and M&A with law firm Dillon Eustace.

"Personalities and cultural differences are frequently cited as a significant reason for the failure of an acquisition," he notes. "Whilst integration can be challenging, part of the success of an acquisition will depend on the buyer's ability to understand the target's culture and the personalities in its management team."

Practical steps include education of both the buyer's and the target's management about each other's organisation and culture to raise awareness of the differences and likely difficulties in the context of the buyer's overall aims and objectives for the business. "This can also be important to promote a shared vision amongst all parties involved," Benson says.

Careful management of external communication is also crucial. Manning points out that in terms of deal publicity, it is essential that the seller and the buyer agree and implement a strategy for announcements to employees, suppliers, customers and the media. "A buyer might need a very specific or time sensitive approach to deal publicity or market announcements, whereas, that might not be a critical concern for a seller that is exiting the business. Any seller inadvertence around announcements, even to a limited number of people, could be very damaging for the target's and the buyer's business."

And while change is almost inevitable with a merger or acquisition, Benson advises that this change should happen sooner rather than later. "Where changes are to be made following completion, these should be made as early as possible, in particular where this involves imposing new disciplines on management who have been kept on or implementing new systems," he says. "Change is usually most acceptable in the immediate aftermath when, to a greater or lesser extent, it will be part of everyone's expectations."

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Debt & Capital Advisory Services
Raising new facilities to support continued growth

M&A Lead Advisory Services
Sale of its tax-free shopping business to Planet

M&A Lead Advisory and Tax Advisory Services
Sale of the business to Cyara

Financial & Tax due diligence and Debt Advisory services
Acquisition of majority shareholding in Vita Actives and refinancing existing debt facilities

M&A Lead Advisory Services
Sale of the business to Nostra

Financial Due Diligence Services
MML Ireland's investment in Mainport Shipping Limited

M&A Lead Advisory and Tax Advisory Services
Acquisition of Beat FM and Red FM

M&A Lead Advisory Services
Sale of the business to Automated Industrial Robotics Inc

M&A Lead Advisory Services
Sale of the business to Assured Partners

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